

EXHIBIT 1

In the Matter Of:

FAIR FIGHT ACTION vs RAFFENSPERGER

1:18-cv-05391-SCJ

THOMAS BRUNELL, PH.D.

May 21, 2020



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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FAIR FIGHT ACTION, INC; CARE
IN ACTION, INC; EBENEZER
BAPTIST CHURCH OF ATLANTA,
GEORGIA, INC.; BACONTON
MISSIONARY BAPTIST CHURCH,
INC; VIRGINIA-HIGHLAND CHURCH,
INC.; and THE SIXTH EPISCOPAL
DISTRICT, INC.,

Plaintiffs,

Civ. Act. No.

1:18-cv-05391-SCJ

V.

BRAD RAFFENSPERGER, in his
official capacity as Secretary
of State of the State of Georgia
and as Chair of the State
Election Board of Georgia;
REBECCA N. SULLIVAN, DAVID J.
WORLEY, and SETH HARP, in their
official capacities as members
of the STATE ELECTION BOARD; and
STATE ELECTION BOARD,

Defendants.

* * * * *

REPORTER'S CERTIFICATION
ORAL DEPOSITION OF
THOMAS BRUNELL, Ph.D.
MAY 21, 2020
(Reported Remotely)

* * * * *

ORAL DEPOSITION OF THOMAS BRUNELL, Ph.D.,
produced as a witness at the instance of the Plaintiffs,

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1 and duly sworn, was taken in the above-styled and
2 -numbered cause on the 21st of May, 2020, from 9:07
3 a.m., before Brandy Cooper, CSR in and for the State of
4 Texas, reported by machine shorthand, at the residence
5 of witness, located in Richardson, Texas, pursuant to
6 the First Emergency Order Regarding the COVID-19 State
7 of Disaster, and the provisions stated on the record or
8 attached hereto.

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A P P E A R A N C E S

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ALSO PRESENT:

PATRICK MURPHY - Videographer

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P R O C E E D I N G S

THE VIDEOGRAPHER: We are now on the record and recording. Today is Thursday, May 21st, 2020, and the time is 9:07 a.m. Central Time. This begins the videoconference deposition of Dr. Thomas Brunell taken in the matter of Fair Fight Action, Inc., et al. versus Brad Raffensperger, et al., Case No. 1-18-CV05391SCJ, pending in U.S. District Court for the Northern District of Georgia, Atlanta Division.

My name is Patrick Murphy. I am your remote videographer today. Our court reporter today is Brandy Cooper, and we both represent Esquire Deposition Solutions.

And as a reminder, if you mute your audio after make your introduction if you won't be speaking for any duration.

Will those all present please introduce themselves for the record and whom you represent, and the court reporter will then swear in the witness.

MR. KAISER: Sure. This is Matt Kaiser for the plaintiffs.

MR. ANDERSON: Norm Anderson, Kaiser Dillon, on behalf of the plaintiffs.

MS. BRYAN: Leslie Bryan, Lawrence & Bundy, on behalf of the plaintiffs.

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1 MR. TYSON: Bryan Tyson of Taylor,
2 English, on behalf of the defendants.

3 THE VIDEOGRAPHER: The court reporter will
4 now swear in the witness.

5 THE REPORTER: Sorry.

6 This is the oral deposition of Dr. Thomas
7 Brunell, and it is being conducted remotely in
8 accordance with the First Emergency Order Regarding the
9 COVID-19 State of Disaster, Paragraphs 2.b and c. The
10 witness is located at his residence located in
11 Richardson, Texas, 75080.

12 My name is Brandy Cooper, CSR No. 7211. I
13 am administering the oath remotely and reporting the
14 deposition remotely by stenographic means from my
15 residence in the State of Texas. My business address is
16 1700 Pacific Avenue, Suite 1000, Dallas, Texas. The
17 witness has been identified to me through attestation of
18 counsel.

19 Would counsel please state their
20 appearances and locations for the record along with any
21 stipulations and agreements.

22 MR. KAISER: Bryan, I take it -- I realize
23 the law in this is relatively clear, but everybody
24 agrees under oath same as if we were all in the same
25 room?

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1 MR. TYSON: Yeah, that's correct, we -- we
2 agree.

3 MR. KAISER: Yeah. And all stipulations
4 we've had in place for the rest of this case.

5 MR. TYSON: Certainly. Happy to do that
6 as well.

7 THOMAS BRUNELL, Ph.D.,
8 having been first duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. KAISER:

11 Q. Good morning, Dr. Brunell.

12 A. Good morning, Mr. Kaiser. How are you?

13 Q. Good. How are you?

14 A. Same. Same.

15 Q. Good.

16 Dr. Brunell or Professor Brunell?

17 A. Professor is fine. Tom's fine. But Professor
18 or Doctor, I think.

19 Q. Okay. I'll -- I'll try to do that. If I -- if
20 I mess up, it's not intended as a slight.

21 A. I won't be offended.

22 Q. You've had your deposition taken before, right?

23 A. I have.

24 Q. Yeah. How many times?

25 A. Twelve, fifteen, maybe somewhere in there.

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1 Q. Sure. So you -- you probably know the ground
2 rules. Let me go over these briefly anyway. First of
3 all, if I ask you a question, I'm going to assume that
4 you understand the question if you answer. So if you
5 don't understand a question, please let me know.

6 A. Yes.

7 Q. Second, and I think we both did this
8 incorrectly in that last exchange, if I ask you a
9 question, you've got to verbalize the answer with a
10 "yes" or "no."

11 A. Of course.

12 Q. Okay. Nodding your head, even though you and I
13 can both see each other, doesn't do anything to the
14 record.

15 Similarly, we both need to work on not
16 talking over each other. So I will -- when I'm asking
17 you a question, I will wait until you're done answering
18 before I start talking. I would ask, when I'm asking a
19 question, that you also wait until I'm done before you
20 start answering. Is that okay?

21 A. That sounds reasonable.

22 Q. Okay. Great.

23 And you know, I realize it's what, it's
24 9:00 a.m. in Texas?

25 A. Correct.

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1 Q. I assume you haven't had any drugs or alcohol
2 this morning that would impair your ability to testify?

3 A. Just a little coffee.

4 Q. Great.

5 And are you taking any medication that
6 affects your ability to testify, cognitive ability in
7 any way?

8 A. I am not.

9 Q. Great. Okay.

10 So because we're doing this remotely, just
11 to make sure the record's clear, is there anybody there
12 with you?

13 A. At the moment, no, just my dog, although my son
14 will be coming in at some point, probably after lunch.
15 But at the moment, it's just me and the dog.

16 Q. Okay. And I would ask, when your son comes in,
17 if you can sort of let us know that.

18 A. You'll know because the dogs are going to bark,
19 but yeah, I will -- if for some reason he doesn't bark,
20 I will let you know.

21 Q. Great.

22 And similarly, in order to try to make
23 this as close to as if we're in the same room as
24 possible, I realize sometimes on Zoom calls or remote
25 calls, sometimes people look at other -- they shift away

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1 from the screen that's live, the Zoom screen. If you do
2 that, can you let us know?

3 A. Sure. So --

4 Q. Does that make sense?

5 A. Yeah, it does. And I do have my -- my -- right
6 here is my -- I'm on my laptop and my desktop is right
7 here, and that's where I'm going to read anything that
8 you want me to read. So I will be looking this way
9 whenever I'm reading anything. So I don't think you
10 want me to tell you every time I do that. But if you do
11 want me to tell you every time, I will.

12 Q. I think that -- I think that makes sense.

13 Let's do it this way: If you're looking
14 at something other than the video call or the documents
15 we're talking about, let us know; is that fair?

16 A. Yes.

17 Q. Okay. Great.

18 So let me turn to, I guess, Document J
19 that was just e-mailed to you. And let's mark that as
20 Exhibit 1.

21 (Exhibit No. 1 was marked.)

22 MR. KAISER: Court reporter, is that okay?
23 You've got that?

24 THE REPORTER: Yes, that will be something
25 that will have to be done after the depo with me. Thank

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1 you.

2 MR. KAISER: Let me make a note.

3 Q. (BY MR. KAISER) You've got that in front of
4 you?

5 A. I do.

6 Q. Great.

7 And do you recognize this document?

8 A. I do.

9 Q. Okay. You'll notice on the second page it says
10 "Notice to Produce"?

11 A. Yes.

12 Q. And I understand that you're -- that -- that
13 Bryan just sent us a couple of documents.

14 Do you know what he sent us?

15 A. Yes, I do.

16 Q. What did he send?

17 A. He sent the three invoices that I've submitted
18 to him for my work in this case.

19 Q. And I take it that responds to No. 1?

20 A. Correct.

21 Q. Okay. Do you know if he sent us any documents
22 that respond to Numbers 2 or 3 on that list?

23 A. He did not.

24 Q. Do you know if there are any documents that
25 respond to Numbers 2 or 3?

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1 A. There is not -- not to my knowledge, there are
2 not.

3 Q. Okay. Okay. Great.

4 So let me ask you this: How did you
5 prepare for the deposition this morning?

6 A. I looked over the reports that were produced
7 that you sent me, the -- you know, my responses and then
8 the various reports by Professor Smith and Herron and
9 McDonald, and Bryan and I had a conversation yesterday
10 on the phone talking about what would happen today.

11 Q. Did you look at anything else other than those
12 reports?

13 A. This morning I was looking at like the news
14 for -- about precinct closures and stuff like that
15 related to COVID. So that's kind of one thing I was
16 doing this morning that isn't related to the documents,
17 but I think that's it.

18 Q. Sure. Sure.

19 But did you do that in preparation for
20 this deposition, or just because everybody's so worried
21 about COVID?

22 A. Maybe both, I suppose. I mean I think we might
23 talk about precinct closures today a little bit. It's a
24 topic that, you know, the news might be relevant to our
25 conversation today, maybe, perhaps. And maybe it may

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1 not be.

2 Q. Okay. Fair enough.

3 So let's make sure we've got a -- we're on
4 the same page about the documents you looked at. There
5 were reports, just to go through this quickly. You
6 looked at the original Dan Smith report from
7 December 16th of last year; is that right?

8 A. Yes.

9 Q. Okay. Then -- then you had an expert report
10 from February 3rd responding to Dan Smith's report?

11 A. Yes.

12 Q. And then there was an expert from Professor
13 McDonald on February 18th?

14 A. Yes.

15 Q. An expert report from Professor Aaron on
16 February 18th?

17 A. Correct.

18 Q. Okay. Then Dan Smith had a supplemental report
19 on March 4th?

20 A. Yes.

21 Q. Great.

22 Then you responded to that supplemental
23 report on April 3rd?

24 A. Correct.

25 Q. Then we've got a supplemental report on

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1 April 8th from McDonald, correct?

2 A. Right.

3 Q. And an April 9th supplemental report from
4 Professor Herron?

5 A. Right.

6 Q. And I believe the one I've missed is your
7 response to Professors Herron and McDonald on
8 March 20th; is that --

9 A. Yes, that's correct.

10 Q. That's the universe of documents you've looked
11 at to prepare besides the news reports on COVID and
12 recent closures?

13 A. Yes, I believe so.

14 Q. Great.

15 You said you reviewed them. What's that
16 mean?

17 A. I mean I read them, I reminded myself -- you
18 know, it's been a while. Some of these it's been
19 several months so I had to remind myself what -- what
20 was going on, what was -- what were -- what were the
21 reports about, what were my objections to what various
22 of my colleagues did. So, but that's really all, just
23 sort of rereading those and reminding myself what's
24 going on.

25 Q. Okay. And you and Mr. Tyson talked yesterday?

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1 A. We did.

2 Q. For about how long did you talk?

3 A. I think it was about 90 minutes.

4 Q. Okay. Great.

5 Let me turn now to what we'll mark as
6 Exhibit 2, and this is going to be your first report
7 from February 3rd, 2020.

8 (Exhibit No. 2 was marked.)

9 Q. (BY MR. KAISER) Do you have that?

10 A. Yes, I do.

11 Q. So this document is your -- the first report
12 that was filed from you in this case, right?

13 A. It is.

14 Q. And it's got your CV on it; is that right?

15 A. It does.

16 Q. So can you turn with me to, I guess, Page 16 --
17 if you look at the numbering on the -- you see the
18 numbering at the top of the document?

19 A. Yes.

20 Q. Where it's in blue for me. Is it in blue for
21 you?

22 A. No, it's not.

23 Q. Okay. Well, there's numbering at the very top
24 of the document. There's the case number, then document
25 number. We're talking about the same thing?

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1 A. Oh. I thought you were talking about -- I'm
2 looking for the page number. I'm on Page 16.

3 Q. Yeah. No, can you see my screen, what I'm
4 holding up?

5 A. Yeah, now I know what you're talking about, the
6 blue header at the top of the page.

7 Q. Exactly. Exactly.

8 A. Yes.

9 Q. Excellent. Thanks.

10 Okay. So Page 16 in the blue header
11 numbers.

12 A. Yes, I'm on it.

13 Q. Okay. What's that document?

14 A. This is my -- this is my CV.

15 Q. Excellent.

16 Is your CV up-to-date? Sorry.

17 Is this version of your CV the current
18 one? Let me ask you that.

19 A. I believe it is. I believe it is, yes.

20 Q. Okay. And what's your -- I know different
21 people have different practices with updating their CVs
22 to make sure it's up-to-date. What do you -- what do
23 you normally do to make sure your CV is up-to-date?

24 A. Well, I keep a running list of things that
25 should go on my CV -- well, I keep a running list at

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1 work of things that I'm going to put in my annual
2 report. And then at the end of the year when my annual
3 report is due, I also usually update my CV at that
4 point.

5 Q. Okay. So just to sort of be efficient, can you
6 give me a brief overview of your educational background?

7 A. Sure. I went to the University of California
8 Irvine where I got a bachelor's degree, master's degree,
9 and a Ph.D., all in political science.

10 Q. What was your Ph.D. thesis?

11 A. It was on elections to the United States
12 Senate.

13 Q. What part of those elections?

14 A. Well, the title was "Short-term versus
15 long-term forces" and so I was looking at things like
16 the impact of realignment. You know, we have this
17 concept of a realignment where the -- the majority of
18 voters in the country identify with one party and then
19 identify with another party. So I was looking at the
20 impact of realignments which go all the way back to --
21 to the 1800s on elections to the senate.

22 I had a chapter in there about partisan
23 bias in the senate, various sources of partisan bias in
24 the senate. I can't remember what all the chapters
25 were. It's been a long -- very long time now. But

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1 that's basically it.

2 Q. Yeah, that -- that -- great. Thank you.

3 Can you give me kind of the same sort of
4 thumbnail background of your employment history?

5 A. Sure. After I finished my Ph.D., I got a
6 congressional fellowship from the American Political
7 Science Association so I spent a year working on Capitol
8 Hill. And then after that, I got my first academic job
9 at SUNY Binghamton in New York, where I think I was
10 there about four years. And then I switched to -- I
11 took a job at Northern Arizona University in Flagstaff,
12 Arizona, where I think I was there for two years. And
13 then for the past 15 years, I've been at the University
14 of Texas at Dallas.

15 Q. Over the last few years, let's say four years,
16 what classes have you taught?

17 A. I teach classes from -- you know, all the way
18 from the freshman class on introduction to the United
19 States government, and other undergraduate classes I
20 teach include campaigns and elections. I don't think
21 I've taught political parties and interest groups
22 recently, but -- not in the last four year, but I've
23 taught that in the past.

24 U.S. Congress, I have a -- a -- my
25 boutique class is on race and redistricting at the

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1 undergraduate level. Every year I teach a required
2 course for all political sciences majors called
3 "American Political Institutions."

4 And then at the graduate level, I teach
5 classes on the U.S. Congress. I teach a class on
6 election law. I teach a class on -- a seminar on --
7 kind of an introductory seminar on American politics.
8 And I think that's about it.

9 Q. Okay. And I guess this is obvious, but I don't
10 know that it was said. You're a professor in the
11 political science department; is that fair?

12 A. Yes.

13 Q. And aside from teaching and research, do you
14 have any other responsibilities at the -- at the
15 university?

16 A. I do.

17 Q. What are they?

18 A. At the moment, I'm the program head, which is
19 the same thing as a department chair, for both the
20 political science program and the public policy
21 political economy program.

22 Q. Anything else?

23 A. No, that's really it. That's a lot, but that's
24 more -- more than I want to do, so...

25 Q. Condolences.

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1 A. Yeah.

2 Q. Let's talk a little bit about your -- your
3 academic research. So from -- from looking at your CV,
4 it looks like you have written about redistricting a
5 decent amount; is that fair?

6 A. That's correct.

7 Q. Okay. And you've written some papers on issues
8 in the government of the United Kingdom or politics in
9 the United Kingdom?

10 A. Yes.

11 Q. And I thought I saw something about EU
12 government issues?

13 A. Yeah, in the European Court of Justice, in
14 particular.

15 Q. Right. Thank you.

16 Have you written any -- any articles on
17 election administration?

18 A. I believe -- yes, I believe I have. The 2015
19 piece with Shaun Bowler, Todd Donovan and Paul Gronke on
20 election administration and the perception of fair
21 elections.

22 Q. Great.

23 That was the one in Electoral Studies?

24 A. That's right.

25 Q. It's listed on Page 2 of your CV?

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1 A. It is.

2 Q. Great. So let's -- we'll come back to that one
3 in a second.

4 Have you written any other articles on
5 election administration?

6 A. Let me look.

7 Q. Sure.

8 A. That might be the only one that deals directly
9 with election administration. I mean I'm interested in
10 elections in general, but most of my work is about
11 voters and the outcomes of elections and that sort of
12 stuff. So in terms of published research, you know,
13 there's things that are related to election
14 administration, but I think that one is the one that's
15 most clearly directly about the administration of
16 elections.

17 Q. And from the conference presentation section of
18 your CV, it looks like you guys -- it looks like you and
19 the other authors also did some conference presentations
20 that were the same as that paper or the same topic as
21 that paper?

22 A. Probably, yes.

23 Q. Okay. Who was the lead author on that?

24 A. Shaun Bowler is.

25 Q. Okay. And just so I'm clear, there are a

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1 number of coauthors, right?

2 A. There are.

3 Q. How -- how does one interpret the work -- what
4 work each coauthor did in -- in an academic piece?

5 A. It's very difficult to do. We just listed our
6 names alphabetically in that particular article.

7 Q. Okay. So how well do you remember that
8 article?

9 A. I remember -- I remember a little bit. But if
10 you're going to ask me specific questions, I'm going to
11 have to -- I'm going to have to look at it again.

12 Q. That is completely fair. Let me ask you this
13 question, sorry -- and I'm happy to show it to you if
14 you need the article to answer it. I don't -- it's not
15 a memory contest. I want to make sure we get this
16 right.

17 A. Okay.

18 Q. So it -- really do let me know if you need to
19 see the article. In the article -- well, let me do it
20 this way.

21 What's the main sort of thrust of the
22 article, as you remember it?

23 A. You're going to have to show me the article.

24 MR. KAISER: Norm, do you mind e-mailing
25 the article to Bryan so Bryan could e-mail the article

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1 to Professor Brunell? Bryan, is that all right?

2 MR. TYSON: Yes, that's totally fine. In
3 fact, let me send Dr. Brunell's e-mail address to you,
4 Norm. We can do it all at once, if that works.

5 MR. KAISER: That's probably more
6 efficient.

7 MR. ANDERSON: That's fine.

8 MR. TYSON: Okay. I just sent an e-mail
9 to both of you. So that should come to you, Norm, you
10 can just reply on that and it will send to all.

11 Q. (BY MR. KAISER) Do you have your article,
12 Professor?

13 A. Not yet. It hasn't come through yet.

14 MR. ANDERSON: I just sent it so you
15 should receive that in a moment.

16 A. Here it is.

17 Q. (BY MR. KAISER) Okay. Let me ask you just to
18 sort of focus your attention a little bit. What -- what
19 I understand this article to be is a study about really
20 sort of the perceptions people have of fair elections in
21 states that run better or worse elections. So it looks
22 to me, although again, like, look at the article to
23 see -- for my purposes, this is what I care about.

24 It looks to me like what you did is you
25 looked at the election performance index as a measure of

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1 whether a state is running an election well. And then
2 you looked at perceptions within each state about
3 whether their election process is fair or not.

4 So what I'm hoping you can do is look and
5 let me know at a relatively gross level if that
6 describes the point of this article.

7 A. All right. Let me look at it really quickly,
8 just to remind myself.

9 You're -- I think that your
10 characterization is reasonably good.

11 Q. Thanks.

12 So as I look at this, it looks like when
13 you did the first part of that, trying to figure out if
14 the state runs an election well, you -- you took the
15 sort of data and conclusions from the election
16 performance index, which I -- I guess is run by the Pew
17 Center for the states, as -- as the beginning and end of
18 that analysis. You did not do an independent analysis
19 of state performance beyond that in the conducting of
20 elections? But tell me if that's wrong.

21 A. I believe that that is correct.

22 Q. Okay. And -- and where I'm looking at for
23 that, if you look -- you know, in -- in my copy, it's --
24 which I believe is the copy you've got, so it's Page 3.

25 A. (Moves head up and down.)

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1 Q. You've got "Measuring Performance of Elections
2 and Election Laws" as a subheading?

3 A. I see that.

4 Q. Okay. And it looks like in the second
5 paragraph of that section, that's where you describe
6 what the -- you know, sort of the basis for your
7 assessment of whether an election is well run or poorly
8 run?

9 A. Correct.

10 Q. And it's not the case that this is an in-depth
11 treatment of whether elections are run well enough, you
12 take the Pew Center's work as the starting point and
13 ending point of that analysis. Is that a fair
14 characterization?

15 A. We use the Pew -- Pew trying to measure how
16 well the different states run their elections and we did
17 use their data. We looked at it. We -- I -- I do know
18 that we looked at it to see if we thought that this
19 was -- made a reasonably good metric from our
20 perspective of what's going on. And we decided that it
21 did so we did use it as a measure of election
22 administration performance.

23 Q. Sure. But you then didn't get in -- at least
24 in the paper that was published, do an independent
25 assessment of election performance beyond what Pew did?

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1 A. I don't recall to the extent we tried or didn't
2 try to individually assess it. You know, this -- this
3 is a few years old now, so I don't -- I don't really
4 recall everything we did. A lot of stuff happens behind
5 the scenes when you write a paper. Lots of stuff gets
6 put in, lots gets left out, so I'm not entirely sure
7 whether we did or did not.

8 Q. But in terms of what's in the paper itself,
9 there's not an additional independent analysis about
10 different states are doing aside from what the Pew
11 Center has, what the Pew Center did?

12 A. I mean I would really have to read the whole
13 thing to see if we added any additional variables that I
14 could disagree with you about your characterization on.
15 So, you know, I want to agree without having read the
16 whole thing in -- in toto. But we did use the Pew
17 Center's metrics after looking at it and examining it.
18 And like -- like political scientists often do, we like
19 it when other people measure stuff for us too.

20 But, you know, whether or not -- I
21 don't -- I'm not just going to blanket agree with your
22 characterization that we did nothing else.

23 Q. Okay. Okay. Fair enough.

24 You have testified as an expert before,
25 right?

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1 A. Yes.

2 Q. And if we go to your CV. So do you have your
3 CV back in front of you?

4 A. I do.

5 MR. TYSON: I believe you're looking for
6 Page 31, Matt?

7 MR. KAISER: You're good to me.

8 A. It is 31.

9 Q. (BY MR. KAISER) Okay. So in your expert
10 testimony, first of all, the topics you're qualified on
11 as an expert are what, racial block voting analysis,
12 voting rights acts, partisan gerrymandering,
13 representational fairness and traditional redistricting
14 principles; is that a fair characterization of what
15 you're typically qualified for as an expert?

16 A. Those are some of them, for sure. But I've
17 testified about the census in the past. I did work in a
18 Florida case about election administration. So there
19 are -- there are other things, but in general, I would
20 say I'm usually called to testify about redistricting
21 and voting rights acts and related stuff.

22 Q. Okay. In the Florida case where you testified
23 about election administration, which one was that?

24 A. I don't know if that's made it on the list yet.
25 That's the one that Dan Smith also worked on. And the

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1 name escapes me at the moment. But I think -- I think I
2 cited my report -- or his report in the case in my first
3 report. Let me look.

4 Q. It's the one -- I think we'll -- we'll talk
5 about that study in a little bit. But is that DNC
6 Services Corporation, et al. versus Lee, et al.?

7 A. I don't remember for sure. That sounds kind of
8 familiar, but I don't want to --

9 Q. Sure.

10 A. Yeah.

11 Q. The report you submitted, what year did you
12 send it in?

13 A. I believe it was just last year.

14 Q. And what was the basis -- what was the -- what
15 was your testimony in your expert report in that one?

16 A. The case was about --

17 Q. Yeah, sorry.

18 You submitted a report, right?

19 A. I did submit a report.

20 Q. Did you testify?

21 A. No. The case was -- well, my understanding is
22 the case was dismissed at some point so it never got to
23 a position in which the experts testified. I don't even
24 know if I was ever deposed. I don't recall. But I know
25 that I never testified in court.

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1 Q. Okay. And is that on your CV?

2 A. It doesn't -- I don't -- I don't see it, so I
3 don't think that it is.

4 Q. Okay. I guess a note to update for later?

5 A. Right.

6 Q. All right. And what was your testimony in --
7 what was your opinion in that expert report that you
8 filed in that case?

9 A. Well, the case broadly was about signature
10 mismatch and ballots being thrown out for signature
11 mismatch. So Professor Smith wrote a report and I wrote
12 a rebuttal report, you know, basically the same way that
13 I did for this case, you know, talking about the
14 shortcomings of his analysis, what he -- what he left
15 out, those sorts of things.

16 Q. Okay. And that -- that was signature mismatch
17 in vote by mail; is that right?

18 A. I believe that that's correct.

19 Q. And your -- your report was, I guess, limited
20 to responding to his report; is that fair?

21 A. I mean, just going by memory, I feel like
22 that's what it was limited to, but -- but I can't be
23 sure.

24 Q. Okay. And that's the only time you've
25 testified or offered an expert opinion about an issue of

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1 election administration; is that fair?

2 A. I don't -- I don't really know if that's -- I
3 don't know if I would agree with that either.

4 Q. What other -- other times have you offered an
5 expert opinion about election administration -- well,
6 let me back up.

7 When I say "election administration,"
8 what's that mean to you?

9 A. Things having to do with the process of voting,
10 counting votes, collecting votes, that sort of thing.

11 Q. Okay. Fair enough. Right.

12 So when did you offer another opinion
13 about election administration?

14 A. I mean it could have come up in any of these
15 things. I'm not saying that it did, but I can't swear
16 to you that I've never testified about election
17 administration in the past. You know, sometimes these
18 things come up, you know, as a -- as an aside in a
19 redistricting case or something like that. It might
20 have -- might have come up in a -- in a previous case.

21 The South Dakota case was about -- if I
22 remember right, was about election administration. I
23 think it was about the location of -- the polling
24 locations, so I think that's directly related to
25 election administration. And like I said, the other

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1 ones, it -- you know, it may have come up in other -- in
2 other of these cases as well.

3 Q. And what was your -- what was the issue in the
4 South Dakota case?

5 A. The state was being sued because -- let me see,
6 I don't know if they wanted -- I think they were being
7 sued -- the plaintiffs wanted more polling locations, if
8 memory serves correctly. Or maybe longer hours. I
9 don't -- I don't remember exactly, but it was -- I think
10 it was about the location and hours in which polling
11 locations were open in general.

12 Q. Okay. And do you remember what your opinion
13 was in that case?

14 A. Again, I was a rebuttal witness so I -- social
15 scientist, I can't -- don't remember his name, wrote a
16 report. And the only thing I really remember was he
17 kind of did -- he went out on the streets to conduct
18 interviews, like a -- he did a sample survey where he
19 just kind of went out onto the streets in, you know, one
20 of the big cities in South Dakota, and then he called
21 that a -- a survey.

22 So I was just testifying to the court that
23 this isn't standard political science procedure for --
24 for gathering a random sample.

25 Q. And your -- so it sounds like your opinion was

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1 about survey -- the -- the flaws in, you know, sort of
2 random guy on the street asking questions to people as
3 they walk by as a survey measure; is that fair?

4 A. That was part of it. I don't -- I don't
5 remember everything else. It's been -- I don't have a
6 date on that one, but it's been a long enough time that
7 I -- I barely remember anything about the case at this
8 point.

9 Q. Okay. Let me ask you this: In your report, on
10 the very first page, away from your CV, in the middle of
11 it, you write, My -- I have published a book and dozens
12 of journal articles on redistricting, elections,
13 political parties, Congress and representation?

14 A. Correct.

15 Q. And, you know, aside from what we've talked
16 about, have you written anything else on election
17 administration?

18 A. Not that I -- I can think of, off the top of my
19 head.

20 Q. Okay. Have you written anything on, you know,
21 voting records and what voting records should be
22 maintained by states or how those should be reconciled
23 with one another?

24 A. I haven't published anything on that specific
25 topic.

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1 Q. Okay. Have you testified or offered an expert
2 opinion on that topic?

3 A. The Florida case, does the Florida case --

4 Q. Okay.

5 A. -- count for that one?

6 Q. Aside from the Florida case.

7 A. Maybe the South Dakota case. There might have
8 been another case about early voting, but I can't --
9 have vague recollections of. So -- so I think there
10 might be a couple cases where I've testified about these
11 sorts of things.

12 Q. So what I'm asking about here is not election
13 administration generally, but the maintenance of voting
14 records and reconciling different voting records,
15 different categories of voting records in the same way
16 that Dan Smith did and your -- your response to.

17 A. Okay.

18 Q. So I guess -- I hear you on the Florida case.

19 On the South Dakota, I thought that had to
20 do with polling place locations and the validity of the
21 survey?

22 A. I think -- yeah, it may not have had -- but
23 again, I'm -- without looking at what I said, I can't
24 say for sure. But in general, your -- your -- what I
25 told you in your -- you know, how you've characterized

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1 it back to me is -- is correct.

2 Q. Okay. And the early voting case that you were
3 talking about a second ago, that similarly would not be
4 about sort of voting -- sorry, voting records and
5 reconciling voting records; is that fair?

6 A. I don't recall if my report had anything to do
7 with that, but in general, it was about, you know, the
8 extent to which early voting affects turnout as a --
9 that's kind of the broad theme, as I remember it.

10 Q. Okay. And let's talk about your prior
11 experience with voter list maintenance. So, you know,
12 removing voters from the rolls. Have you written
13 academic pieces about that?

14 A. On that very specific topic, I don't believe
15 that I have.

16 Q. Okay. Have you testified as an expert witness
17 about that?

18 A. In the Florida case does -- I think the Florida
19 case, yes.

20 Q. That was the signature match -- match case?

21 A. Yeah, but voter -- I mean doesn't that fit in
22 your -- in your characterization?

23 Q. So my -- my question was about voter list
24 maintenance, so removing voters from the rolls for
25 either change of national -- change of address issues

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1 or, you know, people that became felonies or died or --
2 or didn't have contact with the election system.

3 Now, the Florida case, it sounds like, was
4 a vote by mail case. Does that have to do, in your
5 understanding, of removing voters from their rolls? I
6 thought that was the signature match issues.

7 A. Yes, I mean I don't know. I guess you're being
8 very, very, very specific. Right. So if you want to
9 drill down, right, that far, I suppose then it doesn't
10 classify -- I mean if you don't want it to classify, I'm
11 happy for you to characterize it in an extremely
12 specific way. And then yes, I will agree with you that
13 the Florida case is not exactly the same as that.

14 Q. Okay. It's not a voter maintenance -- voter
15 list maintenance case?

16 A. Yeah, it -- I mean, you know, there are -- I
17 did look at voter lists and we analyzed all that sort of
18 stuff, and so -- but, you know, if you want, you know,
19 in your very, very specific characterization, it's
20 different in some ways than -- than your
21 characterization.

22 Q. Okay. And now let's talk about the racial
23 impact of polling place changes.

24 A. Okay.

25 Q. What have you written about the -- the impact

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1 of -- upon voters of different racial groups of polling
2 place changes?

3 A. I've written a lot of stuff on the Voting
4 Rights Act, and so I don't know if there's anything -- I
5 can't recall off the top of my head if there's something
6 specific about, I mean, this very, very specific topic.
7 But there could be. I don't -- I can't recall off the
8 top of my head.

9 Q. Okay. And for expert testimony, have you done
10 any -- have you offered expert opinions on the racial
11 impact of polling place changes?

12 A. I mean I think the South Dakota case was
13 related to that and it may have come up in other cases,
14 but I don't -- I don't recall specifically.

15 Q. Let me ask you, I guess, about your experience
16 with programming, programming languages.

17 A. Okay.

18 Q. Computer -- sorry.

19 Political scientists sometimes use
20 programming languages to analyze data; is that accurate?

21 A. Correct.

22 Q. What programming languages do you use?

23 A. I do most of my analysis using a program called
24 Stata.

25 Q. Okay.

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1 A. But I'm familiar with R as well. Those are the
2 two -- those are the two main ones that I use.

3 Q. And you -- so I guess you're able to read and
4 write in R, is that the --

5 A. I'm sorry, you'll have to repeat it because I
6 cut you off accidentally.

7 Q. Sure. I think Zoom is, you know, new for all
8 of us.

9 Is it fair to say you're able to read and
10 write in R?

11 A. Yeah, I think that I have basic understanding
12 of R, although that's not my program of choice. I
13 prefer Stata. I'm much more familiar with Stata. So
14 there's some things in R that -- you know, R -- R is
15 very, very, very -- what's the word I want to use? You
16 can do lots of stuff with R. Okay. So there are people
17 doing, you know, incredibly complex programing in R
18 and -- and that I won't understand. But I have used R
19 in the past, although it's not my preferred package of
20 choice.

21 Q. Okay. Did you use R in analyzing Professor
22 Smith's data?

23 A. No.

24 Q. And actually, do you -- you know, I -- do you
25 know what programming language Professor Smith used?

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1 A. He used -- I think he used R for all of it.

2 Q. Do you know what programming language Professor
3 McDonald used?

4 A. I don't think he said anything. I don't
5 think -- I don't recall getting his data or his files,
6 so I'm not sure.

7 Q. Okay. Do you know if you used R or Stata to
8 analyze his data?

9 A. I don't remember whether I got the actual
10 survey data from him or not. I don't recall.

11 Q. So I guess you -- would you remember if you
12 analyzed it?

13 A. No, I just said I -- I don't recall if I did or
14 not. I don't know if I just used the data that was in
15 his report or if I got -- because I know I got Dan's
16 data, Dan Smith's data. I don't know if -- if Professor
17 McDonald's data was provided to me or not and whether I
18 looked at it or not.

19 Q. Okay. And Professor Herron, did you -- do you
20 know if you looked at Professor Herron's data in Stata
21 or R?

22 A. I don't recall. I don't think that I did. I
23 think I just responded to his analysis and I'm not sure
24 that I looked at his data specifically --

25 Q. Okay.

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1 A. -- the underlying data.

2 Q. When did you first learn about this case?

3 A. Mr. Tyson contacted me a long -- what seems
4 like ages ago. I think it was late last summer, August
5 maybe.

6 Q. And when were you hired by -- hired as an
7 expert?

8 A. I think it was around that time, August or
9 September of 2019.

10 Q. Have you read the complaint in this case?

11 A. Yes, I believe that I have, yes.

12 Q. What's your understanding of what the case is
13 about?

14 A. The case is about a lot of stuff. There's a --
15 there's a lot going on, right. But -- but in general,
16 you know, I think that it's various actions by both the
17 State of Georgia and the counties may have,
18 intentionally or unintentionally, been motivated or have
19 racial implications, disparate racial impact or may have
20 been motivated by race as well.

21 Q. You prepared, I guess, expert reports in this
22 case responding to three different experts. So with Dan
23 Smith, what materials did you look at to prepare your
24 reports in response to his report -- reports?

25 A. I looked at his report. I got his data and

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1 then I think for that -- it's in that, my response -- my
2 initial response to Dan Smith's report where I analyzed
3 EAC data as well.

4 Q. What about the other reports, the other Dan
5 Smith -- the report you did responding to Dan Smith, do
6 you remember what you looked at in that?

7 A. I don't know if I went back and had to relook
8 at his data or not. I don't think there was anything
9 additional that I looked at. But I don't recall exactly
10 what I looked at beyond his response to my response.

11 Q. Okay. What about for Professor McDonald, do
12 you know what you looked at when you prepared your
13 response to him?

14 A. I may have looked at his underlying survey
15 data. I may not have. And let me see, let me look at
16 it really quickly.

17 Q. I'm sorry, what are you looking at?

18 A. I'm looking at my response to Herron and
19 McDonald, Exhibit B.

20 Q. At this point, just for ease, why don't we mark
21 that as Exhibit 3.

22 (Exhibit No. 3 was marked.)

23 Q. (BY MR. KAISER) And that's -- when we -- when
24 we talk about your response, just to make sure we're
25 talking about the same thing, when you look at the top

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1 of that, is it ECF No. -- Document No. 276 from
2 March 20th?

3 A. Yes.

4 Q. Great.

5 A. I did look at information regarding sample
6 sizes for other surveys.

7 Q. What information?

8 A. I was looking for -- I was looking for
9 information -- obviously, I objected to the size of the
10 sample survey, so I was looking -- the first thing I
11 looked at was let's see what the American National
12 Election Study sample size is. And this is -- Professor
13 McDonald mischaracterizes this enhanced response to me
14 saying, I only looked at one study -- one survey.

15 But, you know, they -- like I said in my
16 report, they run surveys every two years since 1952.
17 And I looked at the sample sizes of all of those
18 surveys. And so this is to give the court an idea that
19 his sample size might be too small to rely on.

20 Q. And just so you know, we'll spend -- we'll
21 spend some time talking about that in a bit. Right now
22 I'm mainly just trying to get a sense of what you looked
23 at for each report.

24 A. Sure.

25 Q. Is there anything else you looked at for that

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1 document responding to Professors McDonald and Herron?

2 You've got the report up and it's both documents, may as
3 well talk about both experts.

4 A. Sure.

5 THE REPORTER: Mr. Kaiser, you're talking
6 really fast, sometimes I'm not able to understand what
7 you said. So if you wouldn't mind slowing down,
8 particularly when you read for me, that would be so
9 helpful.

10 MR. KAISER: I'll work on that. Thank you
11 very much. I appreciate it.

12 THE REPORTER: Thank you.

13 MR. KAISER: Please ding me if I don't do
14 that.

15 THE REPORTER: Thank you. I'll throw you
16 my red card.

17 MR. KAISER: Thank you. You should have a
18 yellow card as well.

19 THE REPORTER: I should.

20 A. For Professor Herron, I did look at his two
21 articles that he cites about being assigned new polling
22 places and the odds of turning out. That might be -- as
23 far as I can remember -- off the top of my head,
24 that's -- that's what I remember. That's all I
25 remember.

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1 Q. (BY MR. KAISER) Aside from counsel, aside from
2 Mr. Tyson and others, you know, at his firm or the other
3 firm representing to defendants here, who did you talk
4 to about forming the opinions in your report, if anyone?

5 A. There were two phone calls with officials from
6 the Secretary of State's office, the election people
7 that administer these lists that we're talking about.
8 I -- I don't -- I couldn't tell you what their names
9 were, but there were two separate phone calls with
10 several people on the phone.

11 Q. Do you remember when those were?

12 A. I don't. I really I -- I could not tell you
13 the date.

14 Q. Do you remember -- thank you.

15 Do you remember the role of the people you
16 talked to at the Secretary of State's office?

17 A. Like I said, they had -- these were people that
18 were informed about, you know, NCOA procedures, about no
19 contact, these sorts of things, so they knew a lot about
20 the lists, how people get moved off and on, right, how
21 people move from active to inactive and then how the --
22 how the -- how those procedures work.

23 Q. Okay. Did they talk -- did you talk to them
24 about anything else?

25 A. I'm going to cough. Excuse me.

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1 Well, I know that we talked about -- you
2 know, that's where I -- that's where I got the
3 understanding about the specifics that Professor Smith
4 made in his first report about his assumption that, you
5 know, electronic meant that's the way the voters vote.
6 And I was told by the Secretary of State's office, no,
7 that's -- that's not what that means. That's the way
8 that voters -- the ballot is delivered to the voters.

9 Q. Okay. Did you talk about anything else with
10 him?

11 A. I -- we may have, but in general, those are --
12 those are the main points that I recall.

13 Q. Do you know if you -- well, did you talk to any
14 of the other defense experts in this case?

15 A. No, I did not.

16 Q. So you drafted these three reports. Can you
17 describe to me the process of drafting the reports?

18 A. (No response.) I have no --

19 Q. You have a silly grin. I assume you pulled up
20 a word processor and, you know, pressed A when you
21 wanted an A to appear.

22 A. Right.

23 Q. Did you do a first draft or did counsel do a
24 first draft?

25 A. Counsel didn't. I -- I wrote it. I -- I wrote

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1 all these reports.

2 Q. Okay. And did you send drafts to counsel for
3 their review?

4 A. Yes.

5 Q. And did you change your opinions in light of
6 those conversations?

7 A. No, I don't -- I don't think that I did.

8 Q. You're a paid expert in this case?

9 A. Yes.

10 Q. What's your hourly rate for your work in this
11 case?

12 A. \$750.

13 Q. And I assume I'll get this when I go through
14 the invoices that were just e-mailed, but how many hours
15 have you spent working on this case so far?

16 A. I think it's been around -- I think we're over
17 100 at this point.

18 Q. And how much have you been paid aside from what
19 you've billed in the case?

20 A. I'm not sure I understand your question. How
21 much have I got paid in addition to what I've billed?
22 Or how much have --

23 Q. Well, I assume when you send the invoice,
24 you're not paid immediately. So I'm just wondering how
25 much have you paid total, just as of yesterday's phone

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1 call?

2 A. Right. Interestingly, I had not up until
3 this -- I think early this morning, I hadn't been paid a
4 dime. But I now have been paid for my first invoice, as
5 of this morning.

6 Q. Excellent.

7 And how much was that?

8 A. I believe it was \$43,000, somewhere in that
9 neighborhood.

10 Q. Okay. So now let's go back to your CV. We're
11 on Page 31 and we talked about your redistricting and
12 litigation experience. And I think we talked about one
13 case, the Florida case that doesn't appear on your CV?

14 A. Correct.

15 Q. To the best of your knowledge, are there any
16 other cases where you've been an expert where you
17 haven't -- where they haven't been on your CV?

18 A. Hang on one second. I -- I scrolled up.

19 Q. Sure. Page 31 using the blue numbers.

20 A. Yes.

21 Q. Are they blue for you?

22 A. They are blue for me.

23 I think that -- there are -- there are
24 some additional cases that aren't listed. The Ohio
25 early voting case isn't on there.

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1 Q. Do you remember the case name?

2 A. I -- I don't, I'm afraid.

3 Q. Do you remember when it was?

4 A. Two, three years ago, something like that. I
5 actually thought that I put this on my CV. I thought
6 that I updated my cases. I don't -- I don't know why
7 they're not on there. Because there's a couple other
8 redistricting cases too; one in -- one in Ohio and --
9 and one in North Carolina. And again, I'm afraid I
10 don't remember the names of the cases.

11 Q. So let me ask this kind of overview question,
12 and if we need to go through each place where you
13 expert -- where you offered testimony, we can do it, but
14 I -- we'll see.

15 When you've been hired in -- to give
16 expert testimony in a case, have you ever been hired as
17 an expert for a progressive leaning organization or a
18 liberal leaning organization?

19 A. I don't recall any off the top of my head, no.

20 Q. Have you ever been hired by the Democratic
21 Party?

22 A. Well, I have been hired -- I'm sorry, you got
23 cut off. Would you --

24 Q. I'm sorry, I was talking over you.

25 Either state or national?

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1 A. There -- the Alabama case -- one of the Alabama
2 cases, I worked for the congressional delegation, which
3 was a bipartisan delegation.

4 Q. Sure. So right now I'm just asking about
5 party, and I'll come back to delegations, things like
6 that. But just the party itself, the Democratic Party,
7 either the national or state Democratic Party, have you
8 ever been hired by the national or state Democratic
9 Party?

10 A. I don't believe so, no.

11 Q. Okay. Have you ever been hired by a government
12 entity that is controlled by members of the Democratic
13 Party?

14 A. Well, you're going to -- that's a -- what do
15 you mean by that?

16 Q. Sure.

17 Have you ever been hired by a Secretary of
18 State who's a Democrat?

19 A. Not that I recall.

20 Q. Or I guess I should say, when I say even hired
21 by the Democratic Party or Secretary -- what I mean is
22 hired by lawyers for the Secretary of State or the
23 Democratic Party.

24 A. Sure.

25 Q. I take it that doesn't change your answer?

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1 A. That does not change my answer.

2 Q. So in the redistricting work that you've done,
3 have you been hired by a group of democratic
4 legislatures?

5 A. I have worked for legislatures in which there
6 are democrats in them.

7 Q. Sure. And so, you know, going back to the
8 question about government entity control. Have you been
9 hired by a legislature where the majority party is the
10 Democratic Party?

11 A. I -- not that I recall.

12 Q. But you have been hired by legislatures when
13 the majority party is the Republican Party; is that
14 right?

15 A. Yes.

16 Q. Have you been required by Republican
17 Secretaries of State?

18 A. I believe so, yes.

19 Q. Back in this case you are, right?

20 A. I believe that's correct.

21 Q. Have you ever been hired by the Republican
22 Party or a Republican state party?

23 A. I don't know if I've ever been hired by lawyers
24 representing the party directly. Often times it's like
25 a -- it's a -- it's an elected official. Sometimes it's

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1 been an -- an interest group. But I don't know if I've
2 ever been hired -- I may have been, but I don't recall
3 having been hired by -- Hey, we're going to be working
4 for the Republican Party of Ohio or Michigan or
5 whatever. But it's possible.

6 Q. Okay. Have you ever been hired by a, you know,
7 sort of strictly nonpartisan group?

8 A. I mean strictly nonpartisan, I mean I don't
9 know what -- I don't know -- you're going to have to
10 give me a list of the -- of which groups classify as
11 being strictly nonpartisan because every -- it's going
12 to be a short list.

13 Q. That may be true, and a sad commentary.

14 Have you been hired by any organizations
15 that are arguably nonpartisan, and then we can talk
16 about whether they were nonpartisan?

17 A. That's a good follow-up question.

18 Q. Thank you.

19 A. I think it's possible. You know, I have been
20 hired sometimes -- like the Kentucky finance case, I
21 worked for -- I just work for lawyer. I don't know what
22 his -- what his deal was. You know, I don't know his
23 partisanship or anything like that, and so he was
24 just -- he was just a guy suing the state over the
25 campaign finance limits in the state. And was he a

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1 Democrat, Republican? I didn't ask, he didn't tell, and
2 so I don't know if that qualifies or not.

3 Q. What was your -- what was the issue there?

4 A. He -- the case -- he was suing the state
5 because the -- he was arguing that the donation limits
6 and other limitations, state limitations were a
7 violation of the federal constitution.

8 Q. Have you ever offered an opinion that something
9 the state or county does with respect to elections
10 violates the Voting Rights Act?

11 A. I -- I don't recall off the top of my head, but
12 it's certainly possible with all the redistricting
13 stuff.

14 Q. Have you offered an opinion -- this is if you
15 recall -- about whether a practice or procedure of a
16 state with respect to the conduct of election laws
17 violates any other provision of federal law?

18 A. I don't recall off the top of my head, but
19 again, certainly -- certainly possible.

20 Q. Okay. And I guess with your first answer on
21 the voting rights acts, you know, with the redistricting
22 work that you were doing, what's kind of the nature of
23 that?

24 A. Well, there's -- there used to be -- in
25 general, there was Section 2 violations, which is about,

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1 you know, has the state drawn enough majority/minority
2 districts. And then prior to the -- the case that --
3 the recent case that sort of dismantled Section 4, there
4 were Section 5 violations with the Voting Rights Act as
5 well, which had to do with, you know, what did -- has
6 the state made any changes to their -- to their election
7 administration. And there's a whole process they have
8 to go through if they fall under Section 5 about getting
9 these precleared.

10 Q. Right. I guess my -- my question was about --
11 thank you for that. My question was about the work that
12 you did.

13 Tell me if this -- if this is fair. Is
14 the work that you were doing sitting with folks who
15 would draw a proposed map for districts and then consult
16 with them about whether the map was appropriate? Or
17 good and broadly -- broadly defined?

18 A. I don't -- I don't know. I don't really know
19 what you mean there.

20 Q. Okay. I mean were you helping people,
21 legislatures, legislate -- legislators, legislatures,
22 government officials draw maps for redistricting?

23 A. I think sort of, but I don't -- I don't draw
24 maps, right, but I have been hired prior to a map being
25 drawn and asked to do things that then they would take

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1 into account.

2 Q. Great. Yes. Thank you. Very helpful.

3 A. Okay.

4 Q. Your answers are better than my questions on
5 this.

6 A. I'm trying.

7 Q. We're all trying.

8 When you've done that work, I take it --
9 is one of the things that happens, people say, Here's a
10 possible map and you say, That would be a problematic
11 map?

12 A. I don't know if I've ever done that in
13 particular. I think I -- I have done stuff on
14 particular districts, perhaps, on majority/minority
15 districts and -- and those sorts of things. But I don't
16 think I've ever been hired to like give an opinion, a
17 sort of quasi-legal opinion on, you know, Is this map
18 going to pass muster or not.

19 Q. Let me ask you, your CV says that you attended
20 a 2016 Republic National Convention?

21 A. Does it really say that?

22 Q. Yeah, it's on Page 23.

23 A. Well, that's true. I didn't -- I don't know
24 why I put it on my CV, but that is absolutely true.

25 Q. It's probably true whether or not it's on your

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1 CV.

2 A. Yes, that's -- that's right.

3 Q. What did you do with the Republican National
4 Convention?

5 A. I was just a -- a -- I was just there as a -- a
6 spectator. I was going to say "witness," but that's --
7 that's the wrong word. I was there merely as a
8 spectator. I had friends that had extra tickets and I
9 had never been to a convention before, and so this was
10 my chance to go to one and so I took it.

11 Q. And have you -- did you write anything about
12 it? Was it -- was it an academic project?

13 A. It was -- it had the potential -- everything
14 has the potential to be an academic project. I don't
15 think I ever wrote anything about it.

16 Q. Okay. You were under consideration to be the
17 census director for the Census Bureau under the Trump
18 administration; is that right?

19 A. The -- the media has reported that.

20 Q. Is that not true?

21 A. Well, the White House never confirmed it, so I
22 don't know. It depends on who you're asking.

23 Q. I guess if I were asking you, let's say --

24 A. Right.

25 Q. -- were there talks about you coming to be the

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1 census director?

2 A. There were talks.

3 Q. Okay. You didn't wind up in the job, right?

4 A. That's correct.

5 Q. Did you talk to people about going to be the
6 census director?

7 A. What do you mean?

8 Q. Well, I'm not sure -- did you talk to people in
9 the Trump administration about going to be the census
10 director?

11 A. I did.

12 Q. Okay. And were those people who had the
13 ability to put you in the position of census director?

14 A. As far as I know, yes.

15 Q. Okay. And there was -- I think you said a
16 second ago there were media reports about you being
17 talked about for that job?

18 A. Correct.

19 Q. And some of those reports were negative; is
20 that fair to say?

21 A. Yes, I think that is fair to say.

22 Q. What's your understanding of that criticism?

23 A. That's a loaded question there. I think it was
24 a lack of understanding about me as a person and as a
25 scholar, that's how I would characterize it.

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1 Q. It was reported that you are a registered
2 Republican. Did you see that?

3 A. I did see that, and that's incorrect.

4 Q. What is your -- what's your party registration?

5 A. In Texas, we don't register by parties so I
6 don't have one.

7 Q. Have you ever been to a Democratic National
8 Convention?

9 A. No, but I would -- I would go in a heartbeat.

10 Q. And I guess -- forgive me, I've not been to a
11 convention. I guess you've got to get tickets?

12 A. Yes. They're hard to come by.

13 Q. They don't just let anybody come in off the
14 street?

15 A. That's correct.

16 Q. And you came to go to the Republican convention
17 because you had a friend who had tickets?

18 A. Correct.

19 Q. One of the things that I should have done at
20 the very beginning of this deposition that I didn't do,
21 and I apologize for that, is talk about breaks. You
22 know, and I'm sure, because I know you've been deposed
23 before, you kind of know the ground rules. If you need
24 a break at any point, let me know. Happy to give you a
25 break or take a break, just don't do it while a question

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1 is pending. Is that okay?

2 A. Yes.

3 Q. We've been going for, I think, an hour and 15
4 minutes. I don't know how you're doing. Now would be a
5 natural break point for me, but if you --

6 A. Okay.

7 Q. -- want to --

8 A. Yeah, I could keep -- I -- I leave it up to
9 you. I'm happy to plug along or I'm happy to do a -- to
10 take the dog outside real quick.

11 MR. KAISER: Yeah, why don't we --

12 THE WITNESS: And come back in five
13 minutes.

14 MR. KAISER: Why don't we go off the
15 record. And is five minutes good? I don't know how
16 long your dog needs.

17 THE WITNESS: He doesn't need long. Five
18 minutes is fine.

19 MR. KAISER: Okay. Great. So Come back
20 in five minutes.

21 THE WITNESS: Okay.

22 THE VIDEOGRAPHER: Okay. We're going off
23 the record at 10:19 a.m. Central Time. And recording is
24 paused. We're off the record.

25 (Break was taken.)

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1 THE VIDEOGRAPHER: All right. We are back
2 on the record at 10:26 a.m. Central. Please proceed.

3 Q. (BY MR. KAISER) So we talked a little earlier,
4 you wrote three reports in this case, right?

5 A. Right.

6 Q. Just to make sure I know, we've marked as an
7 exhibit the first two, just as a housekeeping matter.
8 The third exhibit let's now mark as Exhibit 4. It's --
9 this document you should have it's an April 3rd
10 supplemental report, No. 2 of yours.

11 (Exhibit No. 4 was marked.)

12 Q. (BY MR. KAISER) You've got that?

13 A. I do.

14 Q. We'll come back to that in a little bit.

15 So let's talk about your criticisms of Dan
16 Smith. So in the first instance, what is Dan Smith's
17 reputation as a scholar?

18 A. Dan is -- he's a good scholar, good political
19 scientist. I like Dan.

20 Q. Who -- and with all of the -- do you like meet
21 guys at conferences? Are you a part of the team, sort
22 of the political science community?

23 A. Yep.

24 Q. Okay. So let's talk about what you're
25 responding to in Professor Smith's report. In here,

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1 let's go to -- I think it's Document C that you've got.

2 And let's mark this as, I guess, Exhibit 5.

3 (Exhibit No. 5 was marked.)

4 Q. (BY MR. KAISER) And so, just so we're talking
5 about the same thing, this is -- if you look at the blue
6 on the top, it's Document 168?

7 A. Yes. That -- that's Dan's original report,
8 yes.

9 Q. So let's go to Paragraph 8 of that on Page 5.

10 Are you with me?

11 A. I am there.

12 Q. Okay. So this section is the "Summary of
13 Opinions Offered" section, right?

14 A. That's what it says.

15 Q. And, you know, look at it, tell me if you agree
16 or disagree. But, you know, in Paragraph 8 he's talking
17 about his first opinion and in Paragraph 9 he's talking
18 about his second opinion.

19 A. Okay.

20 Q. Is that fair?

21 A. Yes.

22 Q. And Paragraph 8 is about problems he has
23 identified in the -- his opinion there is about problems
24 he has identified in certain voter files maintained by
25 the Secretary of State's office in Georgia; is that

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1 right?

2 A. I think that's right.

3 Q. And then the second opinion is about the
4 processing of absentee ballots for black voters relative
5 to the -- how they were processed for white voters; is
6 that fair?

7 A. That looks like what it says.

8 Q. Great.

9 So your report then in response -- and
10 tell me if this is not your understanding -- it responds
11 to both of those opinions and then it adds a third
12 opinion about some EAC data?

13 A. I -- I mean if you want to classify it that
14 way, I don't think that that's -- that seems reasonable
15 enough.

16 Q. Okay. I'm just trying -- you know, for
17 organizational purposes, as we talk about it, if we
18 classify it that way, do we miss anything?

19 A. You might. I don't -- I don't know.

20 Q. Okay.

21 A. I don't. Yeah.

22 Q. Great. Well, let's talk about the first issue.

23 So when we're with Professor Smith's
24 report, let's go to Paragraph 11 of the report. This is
25 Page 7. You got it?

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1 A. Yes.

2 Q. In Paragraph 11, Professor Smith describes
3 Georgia's system -- describes Georgia as maintaining a
4 single uniform top-down centralized voter list; is that
5 right? That's what --

6 A. That's what he says.

7 Q. Do you disagree with that?

8 A. I don't believe that I do, no.

9 Q. And he describes the top-down system, which
10 says that it's when the state has a single platform that
11 collects and stores all voter registration information
12 from jurisdictions.

13 Do you disagree with that?

14 A. That's what he says.

15 Q. Sorry. Do you disagree that that's what a
16 top-down system is?

17 A. I -- I -- I mean I don't know. I don't define
18 or -- or undefine what a top-down system is. I don't --
19 I don't know if it matters to me.

20 Q. But you agree with the prior sentence that
21 Georgia has a top-down system, right?

22 A. That's my understanding, yes.

23 Q. What do you think a top-down system is?

24 A. Where the state manages the list.

25 Q. In a single platform?

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1 A. Well, I don't know. Like what is -- what do
2 you mean by single platform?

3 Q. What would you think single platform would
4 mean?

5 A. I don't -- I don't know. I really don't know
6 what that means. What is a single platform?

7 Q. Okay. How about in a single place?

8 A. I mean, I don't -- I don't know where they keep
9 the data or, you know, is it in the cloud, is that in a
10 single place? I -- I'm not trying to be -- I don't want
11 to -- I want to get through this, just like you do. So
12 I feel like I'm answering in a way that -- that I'm
13 trying to be really, really argumentative and I'm not.

14 But like I don't -- I don't know what
15 this -- I don't know what a single platform means and --
16 but -- but it is centralized, right? That is my
17 understanding of it. And so if Dan says that it -- that
18 it's a single platform, I'm happy to believe that.

19 Q. Okay. Let's go to the last sentence of that
20 paragraph.

21 A. Okay.

22 Q. Professor Smith says, In a well-functioning
23 top-down system, state election officials oversee voter
24 list information of every legally registered voter in
25 the state, each of whom has a unique identifier.

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1 Do you agree with that sentence?

2 A. I don't know if I agree with his definition of
3 what well functioning is or not. That -- that isn't
4 something that I've -- I've considered and so I don't
5 know if those are the -- the only criteria that I would
6 include in well functioning or if I would include those
7 at all or not. But, you know, if that -- that's Dan's
8 opinion and I'm -- I'm fine with that.

9 Q. You don't dispute that characterization, I
10 guess?

11 A. I do not. But I don't agree with it. I don't
12 necessarily agree with it.

13 Q. Okay. Right. But you're not challenging it?

14 A. I'm not.

15 Q. You're not offering an opinion that that's
16 wrong?

17 A. I'm not.

18 Q. Okay. So before we go to the -- the sort of
19 meat of the opinion in your disagreements, let's go to
20 the next page -- I'm sorry, page after that, it's
21 Paragraph 16.

22 A. Okay. I'm there.

23 Q. So Professor Smith, in the middle of that
24 paragraph, writes, For my academic research. Do you see
25 where I'm going to start reading there?

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1 A. (No response.)

2 Q. Middle of the sentence, there's a semicolon
3 that sort of breaks the sentence, so starting right
4 after the semicolon.

5 A. Okay. I'm going to find it here -- I do see it
6 now, yeah.

7 Q. For my academic research, I routinely conducted
8 verified with data processing across the states. I have
9 published more than a dozen peer-reviewed articles over
10 the past decade that utilize publicly available voter
11 files. In doing so, I have processed hundreds of
12 millions of voter registration records across several
13 states.

14 Do you see that?

15 A. I do.

16 Q. Do you have any reason to believe that that's
17 false?

18 A. I don't.

19 Q. In your academic work, have you processed
20 hundreds of millions of voter registration records?

21 A. I have looked at voter registration records, I
22 couldn't tell you the total number, though.

23 Q. Okay. Have you published articles that use
24 vote registration files?

25 A. I don't know off the top of my head if any of

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1 my published research has, but it's not -- it's not sort
2 of a central thing in my -- in my research, I will -- I
3 will say that.

4 Q. And I guess you're -- tell me if this is right,
5 not trying to argue, but your -- your testimony is you
6 just don't remember right now articles that you've
7 published that have required you to process voter files;
8 is that --

9 A. Correct.

10 Q. All right. So on your report, on Page 2 of it,
11 you write that, In order to better understand Professor
12 Smith's arguments, I downloaded the three data sets he
13 used in his report and tried to replicate what he did.

14 Do you see that?

15 A. I do.

16 Q. It's right at the bottom of the page?

17 A. Yes.

18 Q. I should have said that part about where it was
19 on the page before reading it. If I do that again,
20 please stop me.

21 A. Okay.

22 Q. And then a couple pages later on Page 4, you
23 write in the -- that first full paragraph at the top, I
24 replicated most of what Professor Smith did with respect
25 to the three files from the Georgia Secretary of State's

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1 office, correct?

2 A. Correct.

3 Q. What I'd like to do is get an understanding of
4 what it is you actually did to replicate Professor
5 Smith's work. So can you walk me through that?

6 A. Yeah, the -- I had to basically clean and merge
7 the data sets to -- and then I was kind of going through
8 and trying to make sure -- and I think I was looking at
9 his R code at the same time, trying to see what he did,
10 and I was trying to follow the same exact path that he
11 took to -- to then create his tables in his -- in his
12 report.

13 Q. Okay. So just to break that down for me, you
14 said you clean -- I guess like cleaned and merged the
15 data sets?

16 A. Yeah. I think there was -- I think there were
17 some duplicate records in one of them, and so you have
18 to get rid of the duplicates in order to merge with one
19 of the other files.

20 Q. And -- and the process you used to do that,
21 using R, right?

22 A. No. I worked in Stata.

23 Q. You worked in Stata to do that. Okay.

24 Do you know what programming language
25 Professor Smith worked in?

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1 A. I think he used R for all this, but I don't --
2 he may have used something else, I don't know.

3 Q. You said you looked at his R code?

4 A. Yes, I did.

5 Q. So when you -- when you clean and merge data
6 sets, you know, can you explain exactly what that means?

7 A. Yeah. So, you know, like I said, one of the
8 data sets had -- I don't remember which one, had
9 duplicates. And so when you're merging two data sets
10 together, right, you want to have a one-to-one merge to
11 the extent that's possible, and so you get rid of
12 duplicates in one of the files. And then once you're
13 satisfied this is going to merge nicely, then you
14 just -- then you merge the two data sets together.

15 Q. Okay.

16 A. Based upon, right -- in this case, the -- the
17 voter ID, the unique identifier.

18 Q. Okay. So when you say you merge based on the
19 voter ID unique identifier, tell me if this is an
20 accurate way to describe that. You take File A, which
21 has a bunch of entries, and each entry has a unique
22 identifier; is that right?

23 A. It might, yes.

24 Q. Okay. And then -- well, let's do it with
25 specific files. So you -- you merged the -- the voter

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1 history file with the absentee ballot file; is that
2 right?

3 A. I don't remember exactly, but that sounds
4 right, yeah.

5 Q. Can you tell me what files you merged so we can
6 use the ones you actually worked with?

7 A. Let me look.

8 Q. Sure.

9 A. I did the voter registration file, and then the
10 absentee ballot file, that was the first step. Those
11 are the two that I merged.

12 Q. Did you merge the voter history file?

13 A. I don't recall if I did or not. I feel like I
14 merged all three of them together, but I don't -- I
15 don't see it in the code right here.

16 Q. Oh, I'm sorry, we -- we made a deal early on.
17 Don't you remember, Professor Brunell, that if you were
18 looking at something that we -- we weren't talking about
19 it, you would tell us what it was?

20 A. That's -- I'm sorry. That's right. Well, I
21 should have been specific. But yes, I'm looking at
22 my -- the code that I used in this case to merge the --
23 the files together.

24 Q. Okay. Please let us know if you're going to
25 look at something other than the documents and exhibits

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1 we give you.

2 A. I apologize. And I really should have looked
3 at my report, that would have been much easier, but I
4 didn't.

5 Q. Yeah, how about you looked at your report? I
6 think that might --

7 A. I think that would be easier.

8 Q. You know, if you start at the bottom of Page 2,
9 if I were to choose a place on the report to start. It
10 describes your process there. And -- and please don't,
11 if you -- let me know if you want to look at your code
12 again.

13 So it looks like -- tell me if this is
14 wrong, starting at the bottom of Page 2, it looks like
15 you downloaded the voter history file?

16 A. That was the first step, yeah.

17 Q. What's the voter history file?

18 A. That's a file listing the -- the -- each of the
19 individual voters and some indication of when they had
20 voted. I don't remember what -- and it has other stuff
21 in it as well, but that's the voter history file.

22 Q. What -- what time frame does the voter history
23 file cover?

24 A. I don't recall off the top of my head how far
25 it goes back.

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1 Q. Is it a voter history file for one election or
2 for all elections?

3 A. I don't remember. I don't recall.

4 Q. Do you know if you knew at the time?

5 A. I'm sure I knew at the time. I understood what
6 was in the data sets.

7 Q. Okay. And you downloaded a different version
8 of the voter history file than Professor Smith used?

9 A. That's correct.

10 Q. Why did you use a different version?

11 A. It was a more updated version than the one that
12 he used. So that -- I think in my discussions with the
13 Secretary of State's office, you know, they were
14 explaining to me the different versions that were used,
15 and they said this one might have more updated -- there
16 might have been voters added to these files. The
17 records would be updated since the one that Professor
18 Smith used.

19 Q. You had access to the one Professor Smith used,
20 right?

21 A. I believe it was sent to me, yes.

22 Q. And you didn't use that one?

23 A. I did not.

24 Q. Did you even do a preliminary analysis on that
25 one?

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1 A. I don't know -- I mean the differences were
2 small, and this was a better one so I don't recall if
3 I -- if I did or not. But this was a slightly better
4 version that differed in -- in -- for a couple dozen
5 cases than the one that Professor Smith used.

6 Q. Okay. And you downloaded this voter history
7 file December 19th, 2019; is that right? Bottom of
8 Page 2.

9 A. Yes.

10 Q. And the one Professor Smith downloaded was
11 about a month earlier; is that right?

12 A. Okay.

13 Q. Why would there be different information added
14 to the voter history file for the 2018 election more
15 than a year after the election?

16 A. My understanding from the Secretary of State's
17 office is that, you know, these things get updated
18 manually. And like I said, the -- the two files
19 differed for just -- there's 104 more people in the
20 version that I used, out of a total of 4 million, so
21 we're talking about very trivial differences here. But
22 my understanding is that the Secretary of State's office
23 continues to update or correct errors in the voter data
24 file as time goes on.

25 Q. Yeah. But I guess my -- my question is, why

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1 would a -- a year after the election they still be
2 detecting errors and finding new voters who voted in the
3 election?

4 A. That would be a question for the Secretary of
5 State's office, I think.

6 Q. Is that a question you asked the Secretary of
7 State's office?

8 A. I don't recall. We may have had a discussion
9 about how this works, but sometimes the bureaucracy
10 works slowly. And again, these are -- there isn't very
11 many of them, right, 104 out of 4 million, we're talking
12 about a very small number. And so, you know, I think
13 that if the Secretary of State's office failed to update
14 things when they find new information, that would be
15 more disconcerting to me than them updating a data set.

16 Q. But you would -- well, would you --

17 A. They could ignore new data and just say, Oh,
18 we're not putting this in, right, we're not going to
19 release a new data set. And I think that would be far
20 worse.

21 Q. Should they have found the data closer to the
22 election, the data they needed to update?

23 A. Well, I don't -- I don't know where the
24 information came from, so --

25 Q. Well, did --

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1 A. I can't make a -- you know, a should they have,
2 right. I'm not going to make a normative judgment
3 about, you know, what the Secretary of State's office is
4 doing because I have no idea, neither does Dan Smith,
5 about the specifics of where these data -- where these
6 updated data came from.

7 Q. Well, one of the -- one of the positions -- one
8 of the ballot -- one of the offices on the ballot in the
9 2018 election was the governorship; is that your
10 understanding?

11 A. Yes.

12 Q. Do you know when the person who was elected
13 through that 2018 election took office?

14 A. I would assume shortly thereafter, maybe in
15 early 2019.

16 Q. Right. So it would have been before December
17 of 2019, right?

18 A. Almost certainly, yes.

19 Q. And -- and would you agree with me that it
20 would be good to have the accurate election information
21 in before the person who is determined to be a winner
22 from the election takes office?

23 A. As a general rule, I totally agree with that.
24 But, you know, in -- you know, in terms of this
25 particular case, I know that the winner won by far more

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1 than 104 votes. And so, you know, I don't want -- I'm
2 not trying to be flippant and say these small
3 discrepancies don't matter, because I want every vote to
4 be counted. I want them to be counted immediately and
5 accurately, because I think that's the way elections
6 should be run. But people, regular people like you and
7 I run these bureaucracies so there's bound to be
8 mistakes.

9 Q. Okay. But I guess it's -- so going back to the
10 question I asked a minute ago, just to make sure I'm
11 clear on this. You don't know why more than a year
12 after the election more data was being added to the
13 voter history file?

14 A. I -- I don't. No, I don't. They -- somehow
15 the Secretary of State's office got more information and
16 they did the right thing by updating the data set.

17 Q. Right. And -- and -- okay. Did you compare
18 the -- what -- I know you did some comparisons. What
19 was the nature -- sorry.

20 How much of a comparison did you do with
21 the files you downloaded versus the one that Dan Smith
22 downloaded? And by file, I'm talking the voter history
23 file, the ones we just talked about.

24 A. Right. I don't recall. I don't know if I
25 merged the two and -- and -- and I mean I must have done

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1 something because I do -- I mention that there's 104
2 more people in this version than the one that Professor
3 Smith used, so...

4 Q. Do you know if you got that information from
5 the Secretary of State's office? Or did you do it
6 through your own work with the data?

7 A. My rec- -- I don't recall specifically, but I
8 think that that's from my analysis, not something that
9 was handed to me.

10 Q. And your analysis was criticizing Dan Smith, is
11 that a fair characterization?

12 A. I mean, I was -- I do criticize Professor
13 Smith.

14 Q. Right. And -- and I guess what I'm -- what
15 I'm -- when you are looking at someone else's work to
16 criticize it, why would you use different data than they
17 used?

18 A. Well, the data aren't really different, right?
19 The -- the data set that I have is the -- is the same as
20 Dan's with a very small number of additional records.
21 And so this would have been a way for me to replicate
22 and update what Professor Smith had done. So -- but
23 generally, right, you want to use -- you want to use
24 data sets that are the same, right. You want to
25 replicate what they've done. And that is what I did,

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1 right. We're talking about very, very trivial
2 differences between these two files.

3 Q. Okay. So Professor Smith notes that there's a
4 difference between the number of entries in the voter
5 history file and the data on the Secretary of State's
6 web page by the number of people who voted. Do you
7 remember that?

8 A. I do.

9 Q. And you describe that expectation as overly
10 optimistic. Do you remember that? I can point you
11 where in your report, if you want.

12 A. That sounds familiar. I don't see it, but that
13 sounds familiar.

14 Q. Sure. It's in the middle of Page 3. There's
15 kind of a paragraph in the middle --

16 A. Oh, yes. Yeah, I do see it.

17 Q. How often have you looked at whether a state's
18 voter history file has a number of observation that
19 matches the reported vote totals on election results web
20 page?

21 A. This may have been the first time. I don't
22 know. I don't recall doing this before. Every state
23 does it differently, so, you know, what -- I don't think
24 that there's anything, you know, specific about doing
25 this exercise that is -- that's critical.

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1 Q. Sure. But my question was, just to make sure
2 we're communicating, have you done this for any state,
3 not just whether you've done this for Georgia before?

4 A. Right. I don't think so. But again, you know,
5 this -- you know, just the -- I mean I think the short
6 answer is I don't -- I don't recall doing it in any
7 other state.

8 Q. Okay. All right. So on Page 4 of this, you
9 move on and you work with the absentee file, right?

10 A. I believe so, yes.

11 Q. And on that, you write criticizing Professor
12 Smith that the absentee file -- this is on Page 4 of
13 your report, I'm in the middle of the page. The
14 absentee file contains records for everyone who
15 requested an absentee ballot, not just those that voted
16 by absentee ballot.

17 Do you see that in the middle of Page 4?

18 A. I do.

19 Q. What was your basis for that assertion?

20 A. That, I think that was in my conversation with
21 the -- the folks at the Secretary of State's office.

22 Q. All right. Let's -- let's go to the bottom of
23 that page.

24 A. Okay.

25 Q. So one of the things Professor Smith did --

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1 tell me if this is consistent with your understanding --
2 he took the voter history file and he, I guess, cleaned
3 that up and merged that with the absentee file, and then
4 he merged that with the -- the voter file?

5 A. I believe that's right, yes.

6 Q. And what's the -- well, I should go back.

7 What's your understanding what the
8 absentee file is?

9 A. That's the list of all voters who requested an
10 absentee ballot.

11 Q. What information is in that file?

12 A. I don't recall everything, but I know that
13 there was -- you know, there's the unique identifier. I
14 think there's information about, you know, how they made
15 the request, whether it was electronic or -- or in
16 person or -- or there -- there was other fields as well.
17 And the date, if there's a date when they made the
18 request, and I believe there's some other fields as
19 well. I don't recall off the top of my head all the --
20 all the variables in there.

21 Q. Okay. And I think we talked about earlier, the
22 unique identifier in the absentee ballot file is the way
23 you, I guess, marry entries in the absentee ballot file
24 with the voter history file for a particular voter; is
25 that right?

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1 A. That's correct.

2 Q. And that unique identifier should be in every
3 database that has voter information in it at the
4 Secretary of State's office?

5 A. I don't want to make a blanket statement like
6 that, but, you know, if there's information about
7 specific voters and you want to be able to identify them
8 easily, then including that variable would probably be a
9 good idea.

10 Q. All right. But that unique identifier is also
11 in the voter file?

12 A. I believe it is, yeah.

13 Q. What's the voter file?

14 A. The voter file is the list of all -- all
15 registered voters in the state.

16 Q. Right. Okay.

17 So at the bottom of Page 4 of your report,
18 you note that Professor Smith requested the daily voter
19 file from the Georgia Secretary of State's office for
20 October 15th, 2018. Do you see that?

21 A. I do.

22 Q. And then you criticize Professor Smith for
23 choosing that date, saying that the reason for choosing
24 this particular date is neither clear nor sound when
25 conducting data compilation?

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1 A. Correct.

2 Q. What date do you think should have been chosen?

3 A. I mean I think that picking something, you
4 know, given that there -- there are changes thereafter,
5 something a little bit later probably would have been a
6 better idea.

7 Q. So Professor Smith writes in his report that --
8 this is on Page 20, Paragraph 36, if you want to look at
9 it with me.

10 A. Is this -- which document is this? What's the
11 letter?

12 Q. It's his -- it's his report from December 16th
13 of 2019. Am I giving you the information you need to
14 find it?

15 A. Did you say it's Document B?

16 Q. C, C as in cat, yes.

17 A. I'm on C. Which page?

18 Q. 20.

19 A. Okay.

20 Q. Paragraph 36.

21 A. Page -- okay. I'm on Page 20.

22 Q. Great. Paragraph 36 at the bottom.

23 A. Okay.

24 Q. Here he's talking about the voter file,
25 right --

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1 A. Yes, he is.

2 Q. -- he downloaded, right? So we're talking
3 about the same thing we were just talking about from
4 your report?

5 A. It is.

6 Q. Okay. He says, The -- the data of this
7 snapshot of the voter file is important as it was
8 created well after the state's 30-day voter registration
9 closing deadline prior to the 2018 general election on
10 November 6th, right?

11 A. I see that.

12 Q. What I'm wondering is, why is that not clear or
13 sound?

14 A. Because the data continue -- I mean since we
15 know that the office continued to update, right, and
16 correct errors over the course of time, then it's
17 possible that some of the mismatches that he finds in
18 his analysis are due to recordkeeping errors that were
19 later corrected. And so -- I mean I think generally,
20 you know, using a more updated data set is probably the
21 better idea, right, particularly if we -- if we know
22 that errors have been corrected over time.

23 Q. Did you download a file, a voter list from
24 later that you think should have been the one used?

25 A. Is that -- is this the one -- is the voter list

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1 the one I used from a year later?

2 Q. No. That was the voter history file.

3 A. Oh, the voter history file. I'm sorry,
4 these -- keeping these separate in my head is difficult
5 to do.

6 So I -- I think the other two files I used
7 the same ones that he did.

8 Q. Right. So your criticism is that he -- he
9 shouldn't have used the one from October 15th, right?

10 A. I criticized him for that, yes.

11 Q. And here we're talking about the voter file,
12 just to be clear, right?

13 A. I believe so, yes.

14 Q. If you want to take a minute just to make sure
15 we're on the same page, do. Are you okay? I can't tell
16 what you're looking at.

17 A. I'm looking at my report. The voter list file,
18 is that the same as the voter file?

19 Q. I mean I don't know. I'm not the expert.

20 A. Right. Yeah, I -- now I have similar number in
21 the absentee ballot file, so I don't know if the voter
22 list file is the same -- and Dan had particular names
23 for the files which I don't -- I don't recall.

24 Q. Okay. Well, so the one you're criticizing him
25 for -- for at the bottom of Page 4 up to the top of

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1 Page 5 --

2 A. Yes.

3 Q. -- that's the daily voter file, right?

4 A. I think so. I call it the voter list file.

5 Q. Well, so if you look at the first -- the bottom
6 of Page 4, that first sentence of that paragraph --

7 A. Yes.

8 Q. -- Professor Smith requested the daily voter
9 file?

10 A. Yes. Oh, yes.

11 Q. I'm just -- okay. Great. And that's the same
12 thing as the voter list file at the top of the next
13 page, right?

14 A. I think so.

15 Q. You -- when you say you think so, sometimes
16 people mean that to say yes and sometimes people mean it
17 to say I'm not quite sure, but probably.

18 A. Yeah, no, I think that it is. I mean I -- I
19 should have been more careful to call it one thing and
20 one thing only. But yeah, I call -- in the very next
21 sentence, I'm talking about the same file, so I think I
22 called the daily voter file and the voter list file,
23 those refer to the same file.

24 Q. Okay. And you say that Professor Smith should
25 not have used October 15th as the date to download the

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1 file, he should have been used some other date, right?

2 A. I criticized him for that, yes.

3 Q. Did you download the file from the date that
4 you think he should have used?

5 A. I don't think I did.

6 Q. Okay. So you then did not compare whatever was
7 in that file with the file that he used, right?

8 A. I don't believe that I did.

9 Q. So you don't actually know whether there were
10 any differences between the voter file that he
11 downloaded and, you know, whatever the perfect voter
12 file to download would have been, right?

13 A. I don't recall comparing them.

14 Q. Right. So you don't know if there were any
15 differences?

16 A. Which means, yes, I don't know if there were
17 any differences or not.

18 Q. And you had said that the -- that the voter
19 file is updated, you know, sort of -- it gets updated
20 closer to the election, even after the voter
21 registration file, right?

22 A. I believe that's true.

23 Q. What was the -- what's the basis for that
24 belief?

25 A. I think that's from the Secretary of State's

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1 office.

2 Q. Yeah.

3 On Page 5, that first full paragraph,
4 Another major flaw.

5 A. Yes.

6 Q. You write, Another major flaw in Professor
7 Smith's report is he used valid style code as methods in
8 which the voter cast the ballots, i.e., mailed or
9 electronic. However, these fields indicate the method
10 by which the ballot was delivered to the voter, not how
11 the ballot was cast, right?

12 A. Correct.

13 Q. Where did you get that information?

14 A. That was from the Secretary of State's office.

15 Q. Your phone call with them?

16 A. Correct.

17 Q. Who arranged that phone call?

18 A. Mr. Tyson.

19 Q. Okay. You didn't just call up like the main
20 number and say, Hey, I've got some questions about your
21 records?

22 A. No, I don't think I ever did that.

23 Q. Defense counsel arranged for you to have a call
24 with their client to get the information, is that your
25 understanding?

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1 A. Yes.

2 Q. On Page 3 of your report, you talk about the
3 final vote tally. This is in the middle of that page,
4 that paragraph that starts with, Next Professor Smith?

5 A. Yes.

6 Q. Right in the middle of that, it says, First it
7 is unclear how the final tally on the web page accounts
8 for provisional and supplemental ballots cast.

9 Do you see that?

10 A. I do.

11 Q. Did you ask the Secretary of State about that?

12 A. I believe we did have a conversation about it.

13 Q. Did you learn the answer?

14 A. I think that the -- that -- I don't remember
15 specifically, right, what they said, but, you know, I
16 think that it -- it included -- it did include
17 provisional -- well, I don't -- I can't say for sure
18 whether it did or -- whether it included provisional or
19 supplemental ballots or not. I don't recall
20 specifically.

21 Q. I guess when you write, It's unclear how the
22 final tally on the web page accounts for these ballots,
23 presumably that means at that point you don't know?

24 A. That's correct. I think I'm pretty clear.

25 Q. Right. Because if you knew, it would be clear

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1 and then you would say it?

2 A. That's right. Correct. That's correct.

3 Q. Right. So, and I think you said that you asked
4 the Secretary of State's office about this?

5 A. I -- I recall having a conversation about the
6 web page numbers.

7 Q. Okay. And the -- the Secretary of State's
8 office didn't know?

9 A. I -- no, I'm not saying that. I don't recall
10 what the specifics were about it, but I think that -- I
11 don't know if we talked specifically about provisional
12 and supplemental ballots, but I was asking them about
13 these discrepancies, but I don't recall that they had an
14 answer for why there were -- were discrepancies between
15 the two, but there was a small number of discrepancies
16 between these two -- between the date -- the official
17 data set -- I mean the numbers on the web page and then
18 these data sets that -- that we were using.

19 I mean I think, you know, they were -- you
20 know, they were saying how it could be this and could be
21 that, but I don't recall the specifics.

22 Q. Okay. All right. Let's talk about that
23 Florida opinion. Do you remember the Florida opinion we
24 talked about after Professor Smith's?

25 A. Yes.

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1 Q. Now, you, I guess on the top of Page 4 of your
2 report, note that in unrelated litigation -- are you at
3 the top of Page 4? Just let me ask that.

4 A. I am.

5 Q. In unrelated litigation, Professor Smith
6 writes -- and here you're quoting from his report,
7 County's recordkeeping of VBM, vote by mail, ballots
8 cast by Florida voters is rife with inconsistencies and
9 errors. Right? And that's the language?

10 A. That's what it says.

11 Q. And I take it that's your -- that's one of your
12 criticisms of Professor Smith, right?

13 A. Here in Georgia, yes.

14 Q. Right. And tell me if I've got your argument
15 right. If I don't, please correct me. But Professor
16 Smith says basically, Look, I have done this analysis on
17 a bunch of states and Georgia's records, because of the
18 problems I've identified, are an outlier, they're worse
19 than other states. And --

20 A. If you --

21 Q. I'm sorry. Go ahead.

22 A. No, no. You weren't finished. I'm sorry.

23 Q. Yeah, thanks.

24 And the -- he says, I've done this based
25 on a bunch of states. And one of the states he talks

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1 about is Florida, right?

2 A. That's right. He -- he -- without providing
3 any details or evidence, he argues that Georgia is worse
4 based upon his years of experience. And then he only
5 mentions two states specifically, again, without
6 providing any evidence for the court about how Georgia
7 is worse than these other ones. And one of those is
8 Florida, which I thought was ironic considering he just
9 had been criticizing Florida for their poor
10 recordkeeping months -- months prior.

11 Q. The point of your using this report, referring
12 to this report is that earlier Professor Smith had
13 talked about poor recordkeeping in Florida counties and
14 now he's saying Florida recordkeeping is good, is that
15 basically your argument?

16 A. As far as --

17 Q. I'm trying to make sure we're talking about the
18 same thing.

19 A. Yeah, we are talking about the same thing. He
20 holds that -- again, for this case in Georgia, he only
21 mentions -- he doesn't -- he makes an argument without
22 any support whatsoever. He just says I've done this a
23 hundred -- hundreds of millions of cases and Georgia is
24 really bad, and you're going to have to rely on that and
25 nothing else for -- for that conclusion. And then

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1 later, he says -- you know, he mentions Florida and
2 North Carolina as exemplars for good recordkeeping. And
3 again, I happen to have personal knowledge that he
4 thought only months earlier that Florida was bad at
5 recordkeeping elections. So I thought that that was of
6 interest.

7 Q. Great. So the -- the DNC services case where
8 that report comes from, you were an expert in that case
9 as well, right?

10 A. Correct.

11 Q. And your report responded to his report, right?

12 A. Yes.

13 Q. And the issue in that case was vote by mail and
14 signature mismatch?

15 A. I believe that was the -- the main thing, yes.

16 Q. What do you know about how Florida maintains
17 its voter lists?

18 A. I -- I don't -- I don't know about how Florida
19 maintains its voter lists.

20 Q. So we talked earlier about how Georgia is a
21 top-down system, right?

22 A. We did.

23 Q. And you remember that what that means is that
24 basically all of the information on Florida voters is
25 kept at the -- Florida, sorry. The -- my mistake.

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1 The Georgia records on voters are kept in
2 the Georgia Secretary of State's office, right?

3 A. Correct.

4 Q. They're centralized into state and that's the
5 top and then it goes down to the counties, right?

6 A. Yes.

7 Q. Do you know whether Florida is a top-down
8 system?

9 A. I don't recall off the top of my head, no.

10 Q. And if -- Professor Smith is talking about the
11 records maintained by the counties in Florida, right?

12 A. I don't recall.

13 Q. Okay. So if you go to Page 4 of your report,
14 where you're quoting Professor Smith, he writes -- you
15 write -- Professor Smith writes --

16 A. Right.

17 Q. -- Counties recordkeeping of VBM ballots passed
18 in Florida is rife with inconsistencies and errors,
19 right?

20 A. Correct.

21 Q. And he's talking about the county's
22 recordkeeping, right?

23 A. For that specific -- for that specific
24 instance, yes.

25 Q. The language you quote from the report is about

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1 the county's, right?

2 A. It is.

3 Q. And it's not about the state's?

4 A. I don't know if he criticizes the state
5 elsewhere in that report or not, but for that particular
6 sentence it's about -- it's clearly about the counties.

7 Q. And you don't know what the interaction of the
8 county recordkeeping and state recordkeeping in Florida
9 is?

10 A. Not -- not off the top of my head.

11 Q. You don't know whether that recordkeeping
12 information -- bless you.

13 You don't know whether that's done in a
14 way that's the same as Georgia?

15 A. I don't.

16 Q. Okay. Let's go to Professor Smith's other
17 opinion, the second one --

18 A. Okay.

19 Q. -- the absentee ballots. So Professor Smith
20 offers an opinion that absentee ballots were rejected
21 for black voters at higher rates than they were rejected
22 for white voters, right? Is that basically the opinion?

23 A. Yes.

24 Q. And so in response, you write -- and here we're
25 obvious Page 2 of your report --

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1 A. Okay.

2 Q. -- In terms of racial differences among
3 absentee rejection rates, there are indeed some small
4 differences among all the different racial and ethnic
5 groups. The underlying cause of those differences,
6 however, is unclear?

7 A. Correct.

8 Q. Is that a fair sort of characterization of kind
9 of like the bottom line of your opinion on this?

10 A. I mean I think that that -- I mean it --
11 it's -- it's part of my opinion, yes.

12 Q. Sure. So it -- it looks like your point here
13 is the differences are small and Professor Smith doesn't
14 tell us what causes the differences?

15 A. Those are both true.

16 Q. And -- and those are both your -- your
17 criticisms?

18 A. Correct.

19 Q. Does Professor Smith in -- in any of his
20 reports, does he purport to talk about the cause of
21 those differences?

22 A. No, he does not.

23 Q. Have you read his deposition transcript?

24 A. I have not.

25 Q. Do you know whether he offered a cause at his

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1 deposition?

2 A. I don't know whether he did or not.

3 Q. And you have a couple of, you know -- so aside
4 from the cause part of this, right, where it looked
5 like -- although tell me if you think this is wrong. It
6 looks like you and Professor Smith, like you're just
7 kind of not joined in the issue? He's not offering an
8 opinion and you're pointing out he's not offering an
9 opinion (inaudible) --

10 A. That's correct.

11 MR. KAISER: Madam court reporter, am I
12 talking too fast again?

13 THE REPORTER: (Moves head up and down.)

14 MR. KAISER: I'm very sorry. Thank you.
15 I heard myself do it, and then -- okay.

16 Q. (BY MR. KAISER) All right. So on that -- that
17 first part about the differences, you criticize how
18 Professor Smith gets to the conclusion that there were
19 differences as well in your report, right?

20 A. I do.

21 Q. And here we're on Page 6?

22 A. Okay.

23 Q. You see the "Reasons for Rejected Ballots" --
24 "Ballots" heading?

25 A. I do.

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1 Q. So you look -- look in that paragraph, the last
2 two sentences of that first paragraph underneath it, he
3 only looked at those ballots that were delivered to
4 voters by mail, results for all absentee ballots could
5 be different?

6 A. Yes.

7 Q. And -- and he refers to Professor Smith?

8 A. Correct.

9 Q. Did -- did you do an analysis for all absentee
10 ballot -- ballots rather than just those that were
11 delivered to voters by mail?

12 A. No, I don't -- I don't recall. I don't think I
13 did, but I don't recall specifically.

14 Q. If you did, would you have put that in your
15 report?

16 A. I may have.

17 Q. Okay. If -- if there were -- if there were a
18 big difference when you would add those other ballots
19 in, would you have -- that strikes me as the kind of
20 thing you would have mentioned in your report, that --

21 A. I think that's a fair assumption.

22 Q. Okay. Do you know who receives absentee
23 ballots other than through the mail?

24 A. Well, the people receive it electronically.

25 Q. Well, yeah. Yeah, who -- who receives absentee

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1 ballots in Georgia electronically?

2 A. My understanding is electronic absentee ballots
3 are mainly, although not exclusively, members of the
4 military.

5 Q. Sure. Overseas folks?

6 A. I believe that's right.

7 Q. Do you know how many voters that is in Georgia?

8 A. I don't recall the number. I don't know the
9 number off the top of my head, no.

10 Q. Okay. Do you have a sense of the percentage?
11 Do you know the percentage?

12 A. I would guess it's quite a bit smaller than
13 people getting absentee ballots by mail.

14 Q. Okay. And you say that the results for all of
15 the absentee ballots, including those ballots for the --
16 the military folks, those results could be different,
17 right?

18 A. Correct.

19 Q. You don't say that they are different, right?

20 A. That's correct.

21 Q. So you indicate on that page on -- on -- toward
22 the bottom of Page 6 that the absentee ballot file has
23 reasons why ballots are rejected, right? You list four
24 of them. Do you see that?

25 A. I do.

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1 Q. Do you remember that, that part of your report,
2 just to make sure?

3 A. I do.

4 Q. Do you know as you -- you know, in your work
5 working with the absentee ballot file, do you remember
6 how many different possible answers there are for why a
7 ballot is rejected?

8 A. I think, if I remember right, this was like an
9 open field where a county worker would kind of type
10 something in. And so there were -- there were -- I
11 think that's correct. And so there wasn't -- sometimes
12 they use kind of standard codes and other times there
13 would be codes that were related to the standard codes
14 but different slightly.

15 Q. Right. So I think you identify on the -- I
16 know you identify on the next page some of the reasons
17 are failed to sign in with an elector. And I guess that
18 as a reason appears just once in the absentee ballot
19 file?

20 A. Correct.

21 Q. And there are what, 3200 and change rejected
22 absentee ballots in that file?

23 A. That's right.

24 Q. So it -- is it fair to say that there's not a
25 lot of standardization across county officials about

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1 what they should be entering in that reason field?

2 A. I don't know if that's fair. Like I said, I
3 think that it seems like they were probably instructed
4 what they should put in there, but -- but maybe they
5 just -- maybe all the county officials didn't adhere to
6 their instructions the way they ought to. Because like
7 I said, there was -- there were slight variations on
8 each other, right. So maybe they were supposed to
9 write, you know, no oath and somebody might just write
10 oath, right, instead of putting no oath. So there was
11 variation across the fields, but you could tell what
12 they were getting at.

13 Q. You glitched for a second there for me. I'm
14 sorry, but you -- I think what you said is you could
15 tell what they were getting at?

16 A. Usually you could tell, yes.

17 Q. And you say that you -- it's the county
18 officials who enters the codes?

19 A. I think they're -- well, I don't know if
20 they're county officials. They're election workers. I
21 don't know if they're working for counties or localities
22 or what. But they're -- these are codes from -- from
23 local officials.

24 Q. What's the basis for your belief that they're
25 codes from local officials?

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1 A. I think we've talked -- I talked about this
2 with the Secretary of State's office, I believe.

3 Q. So you asked the Secretary of State's office
4 how does this information get in here?

5 A. That's correct.

6 Q. And that's what they told you?

7 A. Yes.

8 Q. Do you know if there are any qualify control
9 mechanisms that make sure the ballots are reviewed in a
10 timely way?

11 A. I don't. I don't know.

12 Q. Were any quality control mechanisms that --
13 that make sure that the codes are uniform for why a
14 ballot is rejected?

15 A. I don't know if there is or not.

16 Q. So on Page 8 of your report, you say that race
17 information in the Georgia voter file contains a -- a
18 field for unknown?

19 A. Correct.

20 Q. And that that's a little bit more than
21 10 percent of the total voters?

22 A. Around 10 percent, yes.

23 Q. Sure. Oh, my goodness, you're light.

24 A. It's slightly under 10 percent, it looks like.

25 Q. 9.22?

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1 A. Yes.

2 Q. And you sort of posit in that paragraph in the
3 middle, If one race is more likely to refuse to answer
4 this question than the other races, then using the
5 available data to draw conclusions based on race is made
6 more difficult. Perhaps white voters are less likely to
7 answer the race question than other voters.

8 A. (Moves head up and down.)

9 Q. Are you aware of any data or studies that say
10 that a person of a particular race is less likely to
11 reveal race information on a voter application?

12 A. No.

13 Q. And this information comes from voter
14 applications, right? Voter --

15 A. That's right, self-reported.

16 Q. Are you aware of any information or any studies
17 or anything that says that white voters in particular
18 are less willing to share their race?

19 A. No. And it could be any race, white was just
20 an example. If -- if all -- if there's a majority of
21 the -- if -- not even a majority. If -- if Asian voters
22 or African-American voters or Hispanic voters, or any
23 voters of any of these categories are more likely to put
24 unknown than the other racial or ethnic categories,
25 then -- right, then we're going to have -- the analysis

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1 is going to be biased based on this. And we don't -- we
2 don't -- I -- I don't know, right -- and I think that's
3 the problem, I don't think that Professor Smith knows
4 either whether there are more -- if any one of these
5 racial or ethnic groups is over or under represented in
6 the data, which is why I pointed it out.

7 Q. Okay. So you -- you talked -- your sort of
8 next opinion that you offer is about comparing Georgia
9 to other states with respect to absentee ballot
10 rejection rates, right?

11 A. I'm -- yes, on Page 10.

12 Q. Yes. Thank you. Exactly.

13 And you -- you say that, It maybe useful
14 to situate Georgia's absentee ballot rejection rate
15 against the other states in the country to get a better
16 idea if Georgia's rejection rate is too high or too low,
17 right?

18 A. Right.

19 Q. Does Professor Smith offer an opinion about
20 whether Georgia's absentee ballot rate is high or low?

21 A. Um...

22 Q. Ballot rejection rate?

23 A. Yeah, right. Right, right, rejection rate. I
24 mean I think that's the -- that's the implication,
25 right, that it's -- that -- well, I'm trying to think if

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1 he does or not. But I think when he -- when he refers
2 to -- no, that was about recordkeeping.

3 I don't know if he specifically says that
4 or not. But I think that this is a useful exercise,
5 right, to see -- instead of just looking at Georgia in
6 isolation, right, and saying, Oh, my gosh, there's all
7 these errors, I think it's useful to compare it to other
8 states to say, you know, so we don't know the -- is a
9 1 percent rejection rate really high or really low? If
10 we don't look at any other states, we don't know, right?

11 Maybe every other state rejects no
12 ballots, well, then 1 percent is high. But if every
13 other state rejects 10 percent of the absentee ballots,
14 well, then 1 percent is really low. So I think this is
15 a useful -- this is useful information for the court.

16 Q. Georgia, it looks like -- my understanding of
17 your conclusion of the section, and -- and it might be
18 easier to do this by looking at that chart on Page 11.

19 A. Okay.

20 Q. Well, actually, before I have get there, let
21 me -- let me back up.

22 So this is based on Election Assistance
23 Commission data, right?

24 A. That's right.

25 Q. So they -- they do -- how -- how does one

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1 pronounce the study they do, the survey they do, EAVS?

2 A. Oh. I mean, I think EAVS is fine, or maybe
3 E.A.D.S. (sic). You know, we can -- we could say it or
4 spell it out, either way.

5 Q. I'm -- I'm -- I just want to know what the cool
6 kids in the political science world do.

7 A. I would say E.A.D.S.

8 Q. Isn't it V? E.A.V.S.?

9 A. Oh, E.A.V.S., yes, yes, yeah. Sorry.

10 Q. Right. It's voting and --

11 A. Yes. Election Administration and Voting
12 Survey. Yeah, EAVS is kind of a weird word, so I would
13 say E.A.V.S.

14 Q. The E.A.V.S. survey, what is that?

15 A. They do a -- a survey, the EAC surveys all
16 the -- the election administration in every state asking
17 them for specific data on all -- all kinds of variables,
18 not just absentee ballot variables, but about all kind
19 of election -- various aspects of election
20 administration.

21 Q. And it -- it's a survey they -- where they, I
22 guess like, request information from local officials?

23 A. Yes, local and state officials.

24 Q. So they -- thank you, or state officials.

25 They -- do they go out and download the

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1 data and do their own analysis? Or do they just rely on
2 self-reporting from elections officials?

3 A. My understanding is it's all self-reporting. I
4 don't know if they double-check anything or not.

5 Q. And what you did here is you took the, I guess,
6 raw data from the EAVS data set from the 2018 election
7 survey and you looked at the number of absentee ballots
8 that were counted and the number that were rejected; is
9 that right?

10 A. That's correct.

11 Q. And then you figured out a percentage?

12 A. Correct.

13 Q. And what you found is that Georgia's on the
14 high end, but not, I guess, really bad; is that a fair
15 way of characterizing it?

16 A. I don't know if we --

17 MR. TYSON: I'll object to form on that
18 one, but you can answer.

19 A. I don't know if I -- did I said something
20 specific? I said -- I said it's in the upper part of
21 the middle section. I think that's a reasonable -- I
22 think we would all agree that that's a reasonable
23 description of the figure on -- of where Georgia lies on
24 the figure on Figure 1.

25 Q. (BY MR. KAISER) Right. So we're looking at

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1 Page 11 of Figure 1?

2 A. Right.

3 Q. Okay. And I guess as I count, there are, what,
4 11 states plus the District of Columbia that have higher
5 rejection rates than Georgia?

6 A. I count 11 too.

7 Q. Okay. Great.

8 And this doesn't tell us anything about
9 the differences in reinjection rates by rates, right?

10 A. This does not, no.

11 Q. And in fact, the EAVS, the E.A.V.S. -- it's
12 hard -- well, the E.A.V.S. doesn't ask for rejection
13 where it's based on race?

14 A. My recollection is they don't, but I -- I
15 wouldn't swear to that.

16 Q. I guess I -- I'm just wondering why does it
17 matter if there are ten states that are -- have a worse
18 record on rejecting absentee ballots than Georgia?

19 A. Again, I think it is a useful exercise to see,
20 right, instead of looking at Georgia in isolation, you
21 know. And this is kind of standard operating procedure
22 in political science, this is why we have comparative
23 politics, right? Because if we look at one country and
24 say, Oh, my gosh, Finland is doing X, right, is that
25 abnormal? Well, we only know if it's abnormal if we

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1 compare Finland to other countries.

2 And in the same way, I think this is a
3 useful exercise to see how does Georgia compare to other
4 states, right, in terms of its overall rejection rate of
5 absentee ballots. Is it high, low, in the middle, etc.?

6 Q. Okay. All right. So we've spent a fair amount
7 of time talking about Professor Smith and your
8 criticisms of Professor Smith. Do you have any opinions
9 about Professor Smith's work that either aren't
10 contained in your expert reports or we haven't talked
11 about today? Do you have any extra opinions?

12 A. I don't -- I don't -- I mean is there anything
13 that I plan on testifying in trial that's not in my
14 report, is that a better specific question?

15 Q. Yeah, I don't know that I want to -- who knows
16 what's going to happen in the trial. I want -- I'm
17 trying to figure out is there -- is there something that
18 you didn't put in the report that we haven't talked
19 about today that is an opinion that you've got -- an
20 expert opinion that you've got about Professor Smith's
21 work?

22 A. I mean, I don't -- I don't have any surprises
23 in my pocket that, you know, as -- as I sit here today,
24 to spring upon you about -- about Professor Smith. I
25 mean I did criticize him in the other supplemental --

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1 one of the other reports. So I don't -- I don't want to
2 limit -- overly limit myself in what I'm going to say in
3 trial. But I will tell you that there's nothing -- I
4 don't -- I don't have -- there's no October surprise in
5 my back pocket.

6 Q. Okay. And -- and the stuff in the other -- the
7 opinions you've got in your -- your other supplemental
8 report, just as to Dan Smith, just as to Professor Smith
9 at this point, those opinions, although tell me if you
10 think I'm wrong, relate to the opinions in the criticism
11 that we've had -- that we've already talked about here;
12 is that fair?

13 A. I think that that's fair, yes.

14 Q. And so I take it your answer when I ask if you
15 have any extra opinions, any opinions that aren't in the
16 reports and that we haven't talked about today is as you
17 sit here right now, no; is that right?

18 A. I think that that's fair, yes.

19 Q. Great. Then let's talk about Professor
20 McDonald.

21 A. Okay.

22 Q. So --

23 A. Is now a -- is now a good time to take a break?
24 Or --

25 Q. Absolutely. We're going to shuffle paper

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1 anyway. Do it.

2 A. Okay.

3 Q. How much time do you -- either you need or your
4 dog need?

5 A. What -- whatever -- whatever you guys want to
6 do is fine by me.

7 MR. KAISER: Okay. Why don't we take --
8 is ten minutes okay, Bryan?

9 MR. TYSON: That's fine with me, yeah.

10 MR. KAISER: Okay. Agree.

11 MS. BRYAN: Matt, I'm going to use the
12 opportunity to slide off.

13 MR. KAISER: Okay.

14 MS. BRYAN: Enjoy the rest of your day.

15 MR. KAISER: Thank you.

16 Great. Can we go off the record?

17 THE VIDEOGRAPHER: Okay. If there's no
18 objection, we'll go off the record at 11:33 a.m. Central
19 Time. Okay, we're off the record.

20 (Ms. Bryan exits the deposition.)

21 (Break was taken.)

22 THE VIDEOGRAPHER: And we are back on the
23 record at 11:47 a.m. Central Time. Please proceed.

24 MR. KAISER: Thank you.

25 Q. (BY MR. KAISER) Okay. So now let's talk about

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1 Professor McDonald's reports and your criticism about
2 that. Does that make sense?

3 A. Yes.

4 Q. So here we're going to be talking about your
5 report, which was filed on March 24th, 2020. That has
6 already been marked as Exhibit 3. We're also going to
7 be talking about Professor McDonald's report, which was
8 filed February 18th, 2020. Do you have that?

9 A. I have my report open. Let me just get -- I
10 can't find McDonald. So let me reopen it here.

11 Q. Document D, if that helps in what we sent you.

12 A. That does help and I do have it.

13 Q. Okay. Great.

14 So that hasn't been marked, let's mark
15 that Exhibit 6.

16 (Exhibit No. 6 was marked.)

17 Q. (BY MR. KAISER) And then we also have a
18 supplemental excerpt report from Professor McDonald from
19 April 8th of this year. That has also not been marked.
20 Do you have that one open?

21 A. I do.

22 Q. Let's mark that one Exhibit 7.

23 (Exhibit No. 7 was marked.)

24 Q. (BY MR. KAISER) So Professor McDonald, on
25 Page 17 of his report -- do you mind going there with

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1 me?

2 A. Okay.

3 Q. Actually, before we get there, let me ask
4 you -- we talked with Dan Smith that, you know, you guys
5 are in the same kind of community of political
6 scientists. Is Professor McDonald in that community?

7 A. Yes.

8 Q. What's your opinion of his work as a scholar or
9 his reputation as a scholar?

10 A. Mike -- Michael is -- I've known Michael for
11 many years and he's -- I like him as a scholar and as a
12 person.

13 Q. And is -- there are two Michael McDonalds in
14 the political science community, right?

15 A. There are indeed.

16 Q. The other one is a reference on your CV, right?

17 A. Well, both of them are on my -- well, yes. So
18 both of them are on my CV. I coauthored a paper with
19 Michael McDonald in this case many years ago. And then
20 the other Michael McDonald, I believe, has a reference
21 on my CV as well.

22 Q. Fair. Okay. So Page 17, thanks.

23 A. I'm there.

24 Q. Here -- here what I'm trying to do is really
25 sort of frame and organize our conversation. So my

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1 understanding is that Professor McDonald really offers
2 two opinions. And he summarizes those here on -- on
3 Page 17. And the first one is in that first paragraph.
4 He says in that first sentence, It's my opinion that the
5 Georgia Secretary of State's office canceled the
6 registrations of conservatively estimated 59,866
7 no-contact registrants who continue to ride -- reside at
8 their current voter registration address.

9 Do you see that?

10 A. That's on Page 18.

11 Q. No. I'm sorry, I'm looking at the page number
12 at the bottom of the page, not the one at the top. Yes,
13 that's right. It's Page 18 on the blue page number at
14 the top.

15 A. Yes, I'm now there. Okay.

16 Q. Do you -- do you sort of agree with me that
17 that's one of his opinions?

18 A. Yes.

19 Q. And as I read your report, you don't offer an
20 opinion that that conclusion is wrong; is that correct?

21 A. I don't recall -- I don't think that I do,
22 though. I don't -- I don't think I take dispute with
23 the total number, specifically in my report.

24 Q. Right. So you -- you have not offered an
25 opinion here that that opinion of his that I just read

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1 is incorrect?

2 A. I believe that that is true.

3 Q. And then his second opinion, when you look at
4 that -- that second paragraph on Page 18, using the blue
5 page numbers, is that the Georgia Secretary of State's
6 NCOA matching procedures may identify too many
7 registrants as having filed an NCOA form with the
8 U.S. Post Office. And he notes that two data vendors
9 cannot find NCOA matches for nearly 14,732 registrants
10 whom the Secretary of State's office canceled based on
11 an alleged NCOA match.

12 Do you sort of understand that to be one
13 of his opinions as well?

14 A. Yes, although, he -- I think his supplemental,
15 he kind of goes into that again with more specificity.

16 Q. Sure. Yeah, yeah. And regardless of whether
17 he's talking about it in his original report or his
18 supplemental, I think that's kind of his bottom line
19 opinion on that point. Is that your understanding?

20 A. That is.

21 Q. And as I read your report, it -- it doesn't
22 look like your opinion is that you -- is that that's
23 wrong?

24 A. I don't -- I don't think that -- I don't think
25 that I specifically talk about that -- whether the

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1 14,000 number is right or wrong.

2 THE REPORTER: Matt, I didn't hear the end
3 of your question. I heard the opinion that that's
4 wrong, and I saw about six more words come out of your
5 mouth.

6 Q. (BY MR. KAISER) You don't offer an opinion
7 that that's wrong, right?

8 A. I believe that that is correct, I don't dispute
9 the 14,000 number.

10 Q. So Professor McDonald's report and your
11 response to it are -- are about Georgia's process of
12 cancelling voter registrations every other year; is that
13 right?

14 A. That's part of it, sure.

15 Q. What else is in it?

16 A. Well, there's stuff about race as well, I
17 believe.

18 Q. Oh, oh, in your report, yeah, excellent. Thank
19 you. Thank you.

20 So let's, I guess, go to Professor
21 McDonald's report on Page 10, using the blue numbers.
22 It's that table. You see the table?

23 A. I do.

24 Q. And as I look at this, tell me if this is your
25 understanding, on the very right-hand side of the table,

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1 it lists the total voters in the voter file on
2 November 15th and their -- and it breaks down their
3 percentage by rates with the total votes; is that right?

4 A. Correct.

5 Q. And the voter file, it's just the list of all
6 the registered voters, right?

7 A. Correct.

8 Q. And then he has in the -- I guess in the
9 leftmost column, he's got that sort of breakdown of
10 races and ethnic identities that are in the voter file;
11 is that right?

12 A. Yes.

13 Q. Then he has three -- three separate columns to
14 the right of that breakdown of races, NCOA, No Contact
15 and Returned Mail, right?

16 A. Correct.

17 Q. And each one of those categories, the voter's
18 put on what he's calling the first list to be removed
19 from the rolls of registered voters in the State of
20 Georgia; is that right?

21 A. I believe that's correct.

22 Q. So you had testified earlier that you talked to
23 the Secretary of State's office about their process of
24 generating the list that this report is based on, right?

25 A. Yes, we talked about these processes.

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1 Q. So I guess what I'm -- what I'm hoping you can
2 do is explain each of these and how the voter winds up
3 on these lists. And that's not a question yet. Why
4 don't we start with the NCOA list.

5 What does NCOA stand for?

6 A. National change of address.

7 Q. Okay. And what's the national change of
8 address? What's that list?

9 A. When you move, you can notify the post office
10 that you're moving so that your mail can be forwarded to
11 your new address. So it's people that have filed those
12 forms.

13 Q. And -- and what's your understanding of how the
14 Georgia Secretary of State's office uses the NCOA list?

15 A. I mean, I don't know all the specifics, but I
16 know that they get these data -- I believe they get
17 these data from -- from the post -- from the post office
18 or the federal government and then they can flag voters
19 who have moved in Georgia to -- to see if they have --
20 are still at that address or not or if they should be
21 moved from active to inactive status.

22 Q. And do you -- you talked to the Georgia
23 Secretary of State's office about how this list is
24 generated based on the NCOA information; is that right?

25 A. In -- in broad generalities, not -- we didn't

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1 get into the weeds on it.

2 Q. Okay. And so in broad generalities, I think
3 what you just said is that the idea is somebody files a
4 change of address form, that tells the post office
5 they've got a new address and the Secretary of State's
6 office gets and puts them on this list; is that fair?

7 A. Sure.

8 Q. The no contact category that is cited in the
9 second column, how is that list generated?

10 A. That list is for people that have had no
11 contact with the state in various forms, but mainly
12 due -- but mainly with regard to elections for some
13 period of time, at which time -- and I know that the
14 period of time has changed. Again, I don't have -- the
15 Secretary of State's office could tell you
16 specifically --

17 THE WITNESS: Oops. Sorry. My -- my son
18 is here, I believe, according to my dog. Let me mute
19 for -- can I mute, so you don't have to listen to it?

20 MR. KAISER: (Moves head up and down.)

21 THE WITNESS: All right.

22 MR. KAISER: Would you like -- would you
23 like to go off the record for a minute? Okay.

24 THE WITNESS: All right. My -- my son is
25 here in the house with me and I think my dog has figured

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1 that out and we should be good to continue.

2 Q. (BY MR. KAISER) I think it's probably highly
3 likely, but -- unlikely, but if your son tries to tell
4 you anything about your testimony, will you let us know?

5 A. I will.

6 Q. Okay. So we were talking about the no contact
7 list. And I'm sorry, I -- I kind of lost my train of
8 thought with the interruption. But your -- you were
9 explaining your understanding of how the no contact list
10 works. And I think what you said is you understand it
11 in broad brush strokes?

12 A. Correct.

13 Q. That -- and you understand that things have
14 changed a little bit, but that the basic idea is if a
15 voter doesn't have contact with, I guess, the Secretary
16 of State's office or the election system?

17 A. Or through -- through the DMV is my
18 understanding as well.

19 Q. Okay. Then they are placed -- the voter is
20 placed on this list and they are -- do you know how much
21 time elapses before they are -- are placed on this list
22 and removed from the rolls?

23 A. Well, I think it happens and there's multiple
24 steps. So after some period of time in which there's no
25 contact at all between -- they don't vote, they don't

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1 renew their registration, they don't call their local
2 office, they don't -- they don't renew their
3 registration, voter registration, right. Again, there's
4 several different ways that constitute contact with the
5 voter.

6 After some period of time of no contact,
7 then they're placed -- they're moved from active to
8 inactive, at which time they can still vote, right. And
9 then after some other period of time on the inactive
10 list, then they're removed from the voter rolls.

11 Q. Do you know what those periods of time are?

12 A. Not -- not specifically. I think -- I mean I
13 think that for the latter -- I think -- I mean if you
14 want me to guess, right, I can guess. But I don't -- I
15 don't have it all committed to memory. And of course,
16 the people from the Secretary of State's know this far
17 better than I do, but I mean I think I remember bits and
18 pieces of it. And if you want me to -- to -- to recite
19 those, I'm happy to.

20 Q. Okay. I -- I didn't need to know (inaudible)
21 okay.

22 And the kinds of contact that a voter
23 needs to have to avoid being on the no contact list, you
24 had said voting, renewing their registration, talking
25 to, I think it was a county elections office. Anything

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1 else?

2 A. Well, I believe they also are sent
3 self-addressed -- they're sent something to their
4 mailing address telling them that -- that we haven't had
5 any contact with you and if you send this letter back,
6 you know, we'll -- that will constitute contact and
7 you'll be -- you'll remain on the voter rolls. I
8 believe that's another one. And there may be more I
9 don't -- I don't recall.

10 Q. Sure.

11 And then the return mail category, on the
12 middle column, do you know how that's generated or what
13 that is?

14 A. Yeah, that's when -- I believe it's on mail
15 from Election Administration, not -- not any piece of
16 state mail, but I could be wrong about that -- is sent
17 to the voter and is delivered. And then it's returned
18 to the state, to the sender as undeliverable, which
19 would mean that presumably the person is no longer at
20 that address.

21 Q. And with Professor McDonald's report -- and --
22 and I know we talked about this earlier, my memory of
23 your testimony is that you don't know if you got this
24 underlying data or not?

25 A. Yeah, I don't -- I don't recall if I got the --

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1 the survey data. I don't recall if I got the survey
2 data.

3 Q. Sure. But leaving aside the survey data, but
4 underlying data -- do you mind if I ask what you're
5 looking at?

6 A. I'm just looking at Michael McDonald's report.

7 Q. Yeah. I didn't know if your son was -- needed
8 the printer.

9 A. Oh, yeah, no. He is standing there, but it
10 looks like he's got things under control.

11 THE WITNESS: Are you going to be able to
12 print?

13 A. Okay. I think he's got it, so...

14 Q. (BY MR. KAISER) Okay. Great.

15 So Professor McDonald did an analysis of
16 the herds checklist, right?

17 A. Correct.

18 Q. Did you get the data that he used to do that
19 analysis? Survey is a separate category of data, right?
20 So just talking about the purge list data, did you get
21 that data?

22 A. I don't recall. Usually I get all of the data.
23 So if I had to guess, I would say I was provided the
24 data, but I don't recall specifically whether I was
25 given Professor McDonald's data for -- for either one of

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1 those two categories.

2 Q. Okay. Do you remember if you analyzed that
3 data?

4 A. As I sit here today, I don't believe that I --
5 that I did. I don't think that I did. I think I just
6 went off of what he reported in this report.

7 Q. Okay. And you -- well, let's move to your
8 report, the one you filed on March 24th. And let's go
9 to the second page of that.

10 A. Okay.

11 Q. You'll see that the paragraph in the middle
12 starts with "Based on"?

13 A. I do.

14 Q. You write, Based on Professor McDonald's
15 analysis, the administration of voter list maintenance
16 in Georgia does not have a disparate impact on black
17 voters in the state. Similarly, there's no basis for
18 concluding that the State of Georgia acts in a racially
19 discriminatory manner with respect to these processes;
20 is that right?

21 A. That's what it says.

22 Q. And is that your opinion?

23 A. Yes.

24 Q. Can you explain how you reached that opinion?

25 A. Sure. We can go back to Professor McDonald's

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1 report, still on Page -- on Page 10, looking at the --
2 the table that we just spoke about recently. And if you
3 look at -- if you compare the -- the racial and ethnic
4 categories on the -- on the -- the different
5 subcategories to the -- the final column, the voter file
6 count, we can get an idea of are any racial or ethnic
7 groups more likely to be on one of these lists that move
8 you from active to inactive relative to the overall
9 percentage of racial categories in the voter list file,
10 right.

11 And the difference is -- there's not --
12 there's not really any meaningful differences between
13 the various categories and the final -- the voter count
14 file.

15 Q. Okay. Did -- did Professor McDonald offer an
16 opinion that there was a -- a disparate impact based on
17 this?

18 A. I don't think that he did, but he has -- I mean
19 there's a reason why the table -- I mean if you are
20 willing to remove these tables from his report, I'm
21 willing to remove my criticisms of them. They're in the
22 report and I assume that they're -- they're in there for
23 a reason, and I'm responding to them.

24 Q. And -- and again, really your -- your sort
25 of -- your analysis to come up with your opinion about

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1 this disparate impact is really a matter of just reading
2 Table 1 on Page 10, right?

3 A. Yes.

4 Q. And you didn't do any statistical analysis on
5 your own of this data, right?

6 A. Neither did -- yeah, just like Professor
7 McDonald didn't.

8 Q. Did you do any analysis of any other Georgia
9 list maintenance data, right? So they removed voters
10 from the rolls in 2017 and in other years, did you get
11 that data and do an analysis of that?

12 A. No. I was responding to what Professor
13 McDonald did.

14 Q. Sure. Sure.

15 And I guess what I'm -- what I'm wondering
16 is, you know, as I look at your report and what you're
17 telling me, it looks like your -- the basis for your
18 conclusion is that you looked at this number for white
19 not of Hispanic origin voters on the far right-hand
20 column, 52.9 percent, right? And then you went over and
21 looked at it for -- looked at the percentage for white
22 not of Hispanic origin for the grand total of people who
23 are on the purged list and noticed that 54.9 percent is
24 higher than 52.9 percent; is that right?

25 A. And you could look at the various subcategories

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1 as well, like NCOA, for instance, if that's the one that
2 Professor McDonald is most interested in or no contact
3 or whatever.

4 Q. So I guess what I'm -- what I'm wondering is,
5 you know, the -- the percentages are here on the table,
6 right?

7 A. Yes.

8 Q. And -- and you didn't do any analysis of how
9 they got on the table, right?

10 A. Just like Professor McDonald didn't do any
11 analysis how they got on the table.

12 Q. And your opinion is -- you know, the basis of
13 your opinion, I guess, is what I'm wondering about. Why
14 does a political scientist have value to add in just
15 looking at what the percentages are?

16 A. I don't know what -- I don't know what your --
17 what your underlying opinion of what political
18 scientists do is, but Professor McDonald provided
19 nothing more than this table in his report and he
20 made -- he's making the case, even though he doesn't put
21 it in his conclusions, he does have a section where he
22 talks about race where he's talking about -- where he's
23 implying that -- that blacks -- I'll read it directly.

24 Q. What page are you on?

25 A. I am on Page 7 of his report -- 7 and 8.

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1 Sorry.

2 So in the final category, he talks about
3 the fact that blacks not of Hispanic origin have a
4 higher percentage of appearance on the inactive reason
5 for no contact --

6 Q. Where are you?

7 A. Oh, wait. So this is -- this is the first full
8 paragraph on Page 7, right. So he's interpreting just
9 like I did, I did exactly what Professor McDonald did,
10 and we're both political scientists. So if there's no
11 added value here, that would apply to both of us
12 equally, which is -- which is fine, if that's your --
13 that's your opinion of us as a discipline.

14 But I was just doing to same thing, there
15 aren't really big differences between the -- the
16 distribution of racial and ethnic categories in the
17 voter list compared to the race of registrants on the
18 various purge lists, on the -- on the various reasons
19 for the purge list.

20 Q. So let me ask you this -- and for what it's
21 worth, I have a lot of respect for political scientists.
22 I -- I guess I'm trying to figure out what the analysis
23 is that is being offered is. And as I read the summary
24 of Professor McDonald's opinions at the end -- but
25 please tell me if this is wrong -- he is not offering an

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1 opinion that there is a disparate impact based on race
2 from placement on the purge lists. His report doesn't
3 reach that conclusion one way or another?

4 A. I believe that's correct, but he does talk
5 about race. And it's my understanding that's an
6 important part of the case, which is why I address it.

7 Q. Okay. And the way you address it is -- is
8 really just by looking at the percentage numbers on
9 Table 1 on Page 10?

10 A. I do the exact same thing that Professor
11 McDonald does.

12 Q. Okay. Except you reach -- it appears to me you
13 reach an expert opinion about that and, you know, I
14 thought we both agreed that he doesn't?

15 A. I don't -- I mean he doesn't put it in his
16 conclusion and I'm just rebutting the -- I'm talking
17 about things that are important to the case from my
18 perspective. And I think that there's implications for
19 that whether or not he says it or not. And if he
20 doesn't, then he and I agree that there isn't a
21 disparate impact. And so that also is -- is a perfectly
22 fine outcome.

23 Q. Okay. So let's -- let's talk about the survey.

24 A. Okay.

25 Q. So here let's go to your report on Page 2,

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1 where you note that the number of survey responses is --
2 is low?

3 A. Yes.

4 Q. And I -- I believe you say -- see this is in
5 that survey paragraph, starting four lines from the
6 bottom of the page?

7 A. (Moves head up and down.)

8 Q. A sample size of just 142 people is well below
9 the sample size that we usually see for political
10 science surveys published peer-reviewed journal
11 articles.

12 I take it there's probably an "and" that
13 should be between published and peer-reviewed articles?

14 A. Yes --

15 Q. Okay.

16 A. -- that is correct.

17 Q. So let's talk about sample sizes and surveys.
18 One way social scientists, like political scientists,
19 account for uncertainty generated by a small sample size
20 is by calculating margin of errors and weight, correct?

21 A. That's correct.

22 Q. Relatively standard practice?

23 A. Yes.

24 Q. And Professor McDonald, in this case,
25 calculated a margin of error; is that right?

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1 A. He did.

2 Q. And let's look at that. That's on -- in his
3 report on Page 16. I have his report upside down, so
4 give me a second.

5 You see where he kind of lists the margin
6 of error?

7 A. It's on Page 17, if we're going to stick with
8 the blue numbers.

9 Q. Oh, thank you. I'm really sorry. Yeah,
10 thanks.

11 Okay. You see where he calculated the
12 margin of error?

13 A. Yes.

14 Q. Did he do the math wrong?

15 A. No, I don't think that he did.

16 Q. He -- so he calculated -- he calculated the
17 margin of error correctly?

18 A. I believe that he did, yes.

19 Q. And his calculation, once you account for the
20 margin of error, is that there's a range of what,
21 79 percent and 91 percent; is that right, at the very
22 end?

23 A. Oh, yeah. Yes, that's correct.

24 Q. Okay. So what does that mean?

25 A. That means that he -- so the margin of error

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1 gives you kind of boundaries, right, in which -- so you
2 have the -- the sampling mean which is 85 percent,
3 that's what he found, for the number of people that
4 were -- that -- people on the list for reasons of no
5 contact who still -- who haven't moved, right, is -- he
6 got 85 percent.

7 And then given his sample size, right, we
8 know with 95 percent confidence that the true -- right,
9 the real answer is somewhere between plus or minus 6 of
10 the number that he got, right. So that's why it says
11 he's 95 percent confident that the true value is
12 somewhere between 79 percent and 91 percent.

13 Q. And that 79 percent to 91 percent, that is the
14 percentage of people who are on the purge list for no
15 contact who have not actually been moved, is that --

16 A. That's his estimate, yes.

17 Q. And your criticism of that is that the sample
18 size is too small -- or I'm not even sure you say it's
19 too small. You say it's smaller than you normally see?

20 A. That's correct, yes. Yeah, I don't think -- I
21 think if he wanted to get something like this published
22 with only 142 respondents, he might run into -- to
23 objections at the -- at the peer-review level.

24 Q. Okay. And -- and you cite to the national
25 election study?

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1 A. Right.

2 Q. I think you say it's the most well-known survey
3 regarding Americans and their attitudes about politics
4 and elections?

5 A. That's correct.

6 Q. I mean the characterization is correct --
7 incorrect, you said?

8 A. That's -- yes, they're both correct.

9 Q. And you note that the survey -- the total
10 number of respondents that range from 1,132 to 5,852,
11 right?

12 A. That's right. It's between 1952 and I think
13 2016. So Professor McDonald said something about how I
14 reference only one survey, and that's incorrect. I'm
15 referencing the American National Election Study, but
16 it's -- they do a survey every two years since 1952, so
17 it's lots and lots of surveys.

18 Q. Right. So the numbers you just gave us, the
19 1952 through 2018 or '19, whatever you said, those are
20 units, right?

21 A. Right.

22 Q. And that lets you reach conclusions about the
23 American voting public as a whole; is that right?

24 A. Yes.

25 Q. How big is that pool of people? How many

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1 American voters are there?

2 A. Hundred -- I mean certainly it's -- it's
3 definitely over 100 million. Probably somewhere between
4 100 and 200 million people, I would guess.

5 Q. Sure. It's big?

6 A. It is. It's a lot of people.

7 Q. And this survey that Professor McDonald did,
8 right, it's -- it's only talking about voters who are
9 put on the no contact list in 2019, right?

10 A. Right.

11 Q. And that's 97,000 voters and change?

12 A. Correct.

13 Q. So I guess with a smaller population to survey,
14 why wouldn't it be appropriate to have a smaller sample
15 size?

16 A. Because the math works out the same regardless
17 of what the total population is. So you still want more
18 respondents, right, so that we can be more confident
19 about our estimates regardless of whether the
20 population, right, the underlying people that we're
21 interested in is 97,000 people or 97 million people.
22 Which is kind of counterintuitive, but it's true.

23 Q. Okay. And -- and I guess we -- you say --
24 well, let's go to this. Professor McDonald filed a
25 response to your report, right?

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1 A. Correct.

2 Q. And that's -- we've previously marked that as
3 Exhibit 7. Do you have that up in front of you? That's
4 the one from April 8th?

5 A. I do now.

6 Q. Okay. Fair.

7 And he addresses this criticism in that
8 report, right?

9 A. He does.

10 Q. So I think that's on Page 2, right?

11 A. Page 3.

12 Q. You're right. You're so right. Thank you for
13 that. I'm -- yeah. Thanks.

14 Right. So this is the paragraph in
15 reality?

16 A. Yes.

17 Q. You know, his view is academics publish small
18 sample size surveys frequently. In the context of
19 political science surveys, small sample survey sizes are
20 often encountered by researchers studying the behavior
21 of subgroups in the overall population.

22 That's his opinion -- or that's what he
23 says in his report, right?

24 A. Yes.

25 Q. You disagree with that?

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1 A. No. We -- this happens all the time, but that
2 doesn't mean that we -- we can just throw away, right,
3 the -- our -- our basis for believing, you know, what we
4 need in order to conduct appropriate survey sample
5 sizes. So I mean I would be surprised if -- if
6 Latino -- if Professor McDonald and Latino Decisions did
7 not want more respondents -- more respondents are always
8 better. You know what I'm saying?

9 They cost more money, right, so at some
10 point you have to stop getting respondents, but I would
11 guess that they were -- they were -- well, I would think
12 that they would have been disappointed with only 142,
13 that they wished they would have had more -- we always
14 wish we would have had more, right. And so -- and he
15 only cites one -- one -- I think this is telling that he
16 only cites one piece of published research with 132
17 observations in it, right. And again, it's like a
18 sub-sub-sub-sample, it's Latino foreign-born citizens
19 from the American National Election Study.

20 But, for instance, you know, in the 1950s,
21 there was -- we had this -- we had the American National
22 Election Study, which had at the time roughly a thousand
23 to 1200 respondents. And there were some really famous
24 articles analyzing how responsive congressional
25 representatives were. Okay.

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1 And the problem with this is that in order
2 to do this analysis, right, now we're talking about
3 congressional district level rather than the nationwide
4 level. And so for -- for congressional districts, there
5 were only a couple dozen observations for each
6 congressional district. So this published research was
7 soundly criticized because if we can't rely on this,
8 right, because this survey was designed to tap at what's
9 going at the nationwide level, and even though we have
10 the data, you know, coded down to the congressional
11 district level, that doesn't mean we can just use it,
12 right, because we don't have sufficient samples at that
13 level of geography. Okay.

14 And so I think that, you know, I -- I -- I
15 continue on the stand on my -- my argument that sample
16 sizes this small would -- you know, some of them might
17 get through, but in general, people -- peer reviewers
18 are going to be -- going to look at -- are going to
19 frown at samples that small for a survey.

20 Q. Right. Let me just make sure I understand your
21 opinion. Everybody can agree probably that more is
22 always better?

23 A. Yes.

24 Q. At least with respect to survey responses?

25 A. Yes.

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1 Q. And I suspect -- strike that.

2 With this, I guess your opinion is not
3 just that more would have been better. Your opinion, as
4 I take it, is that 142 respondents is such that this
5 wouldn't get published in an academic paper --

6 A. I believe that -- I believe that they would
7 have a hard time. I mean the peer review process all
8 depends on the peers that you draw, right, in order to
9 review it. And we're not all the same, we're all
10 different people. But if -- if somebody -- if I was
11 reviewing a paper and they had a sample size of 142
12 people, I would certainly bring it up as this -- you
13 know, this is problematic.

14 Q. And the -- the journal article that he cites in
15 the next sentence, the one after the one we read, you
16 don't think that should have been published?

17 A. I'm not saying that, but that is -- okay. So
18 I'm looking at it now. So it...

19 Q. That was 139 respondents?

20 A. Right. I didn't actually look -- I haven't
21 looked at that particular article. And I'm not -- let
22 me -- I'm going to click on the link in Professor
23 McDonald's report to bring up the article.

24 Q. Let us not click on the link at this point.

25 A. Okay. I'm going to close -- I'll close the

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1 link.

2 Q. Thank you. I appreciate that.

3 A. All right.

4 Q. Expert in -- in something.

5 Okay. I guess I'm trying to figure out
6 what your opinion is with respect to that article based
7 just on survey size?

8 A. Yeah, I don't know what were they -- it depends
9 on that they were doing, right, with the survey data,
10 right. If he just -- he went and found an article that
11 at some point references 139 Latino foreign --
12 foreign-born citizens in one of their statistical
13 models. Like I don't -- I don't -- I didn't look at
14 what else was going on, right. So is that --

15 Right, because that -- because they use
16 the AMES data, okay. That's what he says right before
17 the 139, which is a much larger sample. But now he's
18 talking about, right, they're interested in -- in a
19 subsample of the population. So that -- just like the
20 example I gave, that can be problematic, right.

21 So, for instance, the American National
22 Election Study has done oversamples of minority voters
23 in some cases, right. Because if we have a 1200 person
24 survey, and we're interested in Hispanic voters, there
25 might only be, out of those 1200 respondents, say 100

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1 Latino respondents. So that doesn't give us the
2 purchase, right, doesn't give us the leverage that we
3 really need in order to study Latinos. And so they --
4 they've done oversamples of -- of voters.

5 And also, they had a similar election
6 study where they needed an analysis was kind of at the
7 same time both the nationwide, but then also, they
8 oversampled certain states so that we could make
9 references or inferences, I'm sorry, about voters from
10 specific states by -- by oversampling voters in states,
11 right. So you want your sample size to be sufficiently
12 large, right, to do this.

13 And -- and I -- again, I think 140, that
14 would raise eyebrows at the peer-review level.

15 THE REPORTER: Would you slow down for me,
16 sir? Thank you.

17 THE WITNESS: I will.

18 THE REPORTER: Thank you.

19 MR. KAISER: I'm glad it's you not me.

20 Q. (BY MR. KAISER) Let's talk about the -- the
21 age differences in this, because you also fault
22 Professor McDonald based on the size of the age levels,
23 right?

24 A. Correct.

25 Q. And you write that some of the statements

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1 weren't -- well, it is a question. Are 14 respondents
2 out of 10,124 representative of all people in the no
3 contact list who are between 18 to 29 years old, is
4 that --

5 A. That's correct.

6 Q. Okay. Does Professor McDonald, does he draw
7 any conclusions about the subgroups by age specifically
8 in his report?

9 A. No, but that doesn't matter, right.

10 Q. Why?

11 A. It's still the case that he only has 14
12 respondents, right, in that age group to stand for
13 10,000 people. So I think understanding that, like,
14 Hey, this -- like any survey, we're taking a sample,
15 right. And even though he doesn't specifically address
16 just the 18 to 29-year-old subgroup, that doesn't mean
17 that that subgroup isn't there. It's still there. And
18 it contributes to the -- his overall conclusions.

19 So the fact of the matter is, if he only
20 has 14 respondents in his survey that fit that age group
21 and they're representing -- their opinions of those 14
22 people are representing the opinions of the 10,000. So
23 I think a judge understanding that might say, you know,
24 I need to be cautious about -- about accepting the
25 results of this survey because the samples are --

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1 particularly when you look at subgroups are very small.
2 The -- elderly people are oversampled. Younger people
3 are undersampled. And that's important. It's important
4 to know.

5 Q. Why does the way not accountable?

6 A. Because you still only have 14. You can't
7 magically -- right, so imagine you only had one person,
8 right, in one of these subgroups, which he almost has,
9 right, because some of these subgroups we're talking
10 about barely double digit people. You know, if we -- we
11 could surely just magically weight them, right, and then
12 say, Okay, young people are underrepresented in our
13 sample so we need to overweight our respondents, right.

14 You've got to remember that you're --
15 you're basing that on just a handful of people, right.
16 So -- and the whole idea of a random sample is you need
17 to get a reasonably size sampled in order to make
18 inferences. So if we just had one person, one Asian
19 person, right, in Georgia that responded to this, sure,
20 we can weight that response really, really heavily,
21 right, to stand for all the Asian people that are really
22 on this list. But that's the problem, right, we don't
23 have a good sample for this subsample in the overall
24 scheme of things. Okay.

25 So the weighting is appropriate, but

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1 understanding that's not a magic -- right, there's no
2 magic here. Right. It -- it was perfectly appropriate
3 for him to weight them, and I say that in my report.
4 And I think he misinterprets what I say in his response
5 to me, but he should have weighted them like he did, but
6 that doesn't fix all the problems, right. If you're
7 undersampling strata in this survey, that doesn't --
8 that's still a problem, right, because you're weighting
9 their responses to stand for a whole bunch of people.
10 Right.

11 And imagine we got the -- the 14 young
12 people, you know, maybe they were totally different,
13 right, than the 10,124 people in the total population
14 for that strata. Right. That's the risk with smaller
15 sample size, right, is that that's what's going to
16 happen.

17 Q. Sure. But there is -- I take it what you're
18 saying is that there's risk of error when the sample
19 sizes are small, right?

20 A. Sure. Absolutely.

21 Q. Are there hard rules for when a sample size is
22 too small?

23 A. There's not -- no. But there's kind of ranges,
24 right. So I think that for most surveys -- most surveys
25 are kind of at or near a thousandish, right, but there's

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1 no -- there's no hard and fast rule.

2 Q. Right. So -- so this is sort of your opinion
3 about what the range of acceptable responses is?

4 A. And I think it's shared within -- within the
5 discipline largely.

6 Q. Let me ask you about the -- you know, one --
7 one other response he's got based on the national
8 election survey.

9 A. Okay.

10 Q. This is Page 4 of his response. Are you there?

11 A. Almost. Okay. Page 4 of his supplemental?

12 Q. Yes.

13 A. I am there.

14 Q. The blue numbers.

15 A. Yeah.

16 Q. Middle paragraph, the last two sentences of
17 that in the link provided by Dr. Brunell --

18 A. Yes.

19 Q. -- what he's saying in this part is that the
20 2016 American National Election Study has a sample of
21 only 18 respondents who are born between 1911 and 1926.
22 And yet that a bunch of people, it seems like almost
23 everybody who does work on elections, including you,
24 relies on the American national election study.

25 A. And that's -- this was -- this is silly.

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1 Q. Okay. Why is it silly?

2 A. I mean so yes, we all rely on the American
3 National Election Study. And is it -- is it surprising,
4 right, that the number of respondents in this survey for
5 people that are 90 -- 80 to 90 years old is only 18,
6 right? That's not surprising at all. And, you know,
7 so, but what he needed to find to make this interesting
8 was that I had published an article based just on those
9 18 respondents, then, right, we could have a
10 conversation.

11 But, you know, I could say, well, geez --
12 you know, if I were him, I could say, you know, the
13 number of, you know, left-handed -- you know, you
14 could -- you could pick some crazy small subset and say,
15 Oh, my gosh, there's only one person in this
16 sub-sub-sub-sample, that's meaningless, right, until I'm
17 trying to do something with that sub-sub-sub-sample.
18 Right.

19 I do, I publish with the American National
20 Election Study all the time, but I've never run an
21 analysis, right, on the 2016 sample for people born
22 between 1911 and 1926. So this example is -- is
23 completely meaningless. Also, it -- it even supports
24 what I'm arguing, right. He wouldn't use that small of
25 a sample, right, that small of a subsample. And he

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1 didn't with his other two groups that were only in the
2 teens, right. How come he --

3 If 139 is fine for him, then how come 17
4 wasn't good enough or 14 wasn't good enough? Right. He
5 didn't run analysis on those two groups, and I assume
6 was because the sample size was too small, right. Those
7 are really too small.

8 So I think this just -- this helps my
9 point more than anything else.

10 Q. So this is a subgroup within the American
11 National Election Study, right?

12 A. That's right.

13 Q. Of variable people?

14 A. Correct.

15 Q. And they only have 18 respondents who are
16 representing the whole American voter voting public,
17 right?

18 A. For their age group.

19 Q. Yeah, thank you. Sorry. Of course, yes --

20 A. Yes.

21 Q. -- for that age group.

22 And you had said -- here's where I'm
23 having trouble. You had said a minute ago about
24 Professor McDonald that he's only got 14 respondents for
25 this group of like, you know, 90-some-thousand people

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1 for their age group and that's too small because we
2 don't know that that's representative of all of the
3 people of that age?

4 A. Right.

5 Q. Here we've only got 18 people who are in this
6 age group who are representing all of the American
7 voting public generally --

8 A. In that age group.

9 Q. Sure. But it strikes me that we have the same
10 problem -- I don't understand why we don't have the same
11 problem with the American National Election Study
12 because 18 is, on your reasoning, too small to get a
13 truly representative sample of people in that age group?

14 A. Well, their -- the over --

15 THE REPORTER: Slow down.

16 MR. KAISER: I didn't understand that hand
17 gesture, I'm sorry.

18 THE REPORTER: I was just telling him to
19 slow down.

20 MR. KAISER: Thank you.

21 A. So the American National Election Study total
22 sample size is -- in 2016. I don't know what it is, but
23 I think it was several thousand, right, so that's the
24 difference there, right. If we -- like I said, for any
25 subgroup, we can -- we can drill down and that becomes

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1 problematic. So there is an analog to what you just
2 said that I'm arguing. So I agree with you that
3 there -- that there's an analog here, there's an
4 analogy. But the total sample size of the American
5 National Election Study is appropriately large, right,
6 and despite the fact that their -- for some -- for some
7 certain subgroups, there might be -- total sample size
8 might be relatively small as we drill down.

9 Q. (BY MR. KAISER) Well, then tell me if I'm
10 wrong. My understanding was you had two arguments. So
11 Argument 1, total sample size is too small. Argument 2,
12 the number of folks within subgroups, the size of the
13 samples within subgroups is too small. And those --

14 A. Some are --

15 Q. -- those are two separate problems with
16 Professor McDonald's survey. It sounds like what you're
17 saying is that if the sample size is big enough, like in
18 the American National Election Study survey, then it's
19 okay that a subgroup has really small numbers as long as
20 you're not doing something specific with that subgroup?

21 MR. TYSON: (Inaudible.)

22 A. Not exactly. Right. So there are two
23 interrelated problems, right. And the first being that
24 the total sample size is small, okay. And then his --
25 when Latino Decisions did the survey, right, they

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1 either -- so why are older people oversampled in this
2 survey? I don't know for sure, but it might be that
3 they're more likely to be at home when they're called
4 than younger people are. It might be that there are
5 more people that fit this group, which -- I'm trying to
6 remember which group specific. I believe it's the no
7 contact list, right, there might be more people in -- in
8 that group that are older.

9 But regardless of why the -- the survey
10 oversamples older people, it did. Okay. And so when
11 you oversample one group, that means necessarily you're
12 going to be undersampling other groups, okay. So my
13 point is that I think it's important to understand this
14 is that, A, the sample size is small and, B, when we
15 look at specific subgroups, there are only a handful of
16 people representing that group. Okay.

17 So in that last part, what I said, right,
18 I think the example he uses is similar, there's only 18
19 elderly Americans in the 2016 ANES, which isn't a huge
20 number of people to stand for all of the elderly voting
21 American public.

22 Q. Right. Here's what I'm hearing you say -- tell
23 me if this is wrong -- if Professor McDonald had a
24 bigger sample size -- or strike that -- yeah, had a --
25 had a bigger number of respondents to the survey, then

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1 the problem with the sample size being skewed would not
2 be present in the same way that the reason only having
3 18 respondents in this older American population is not
4 a problem for the American National Election Study
5 because the sample size for the American National
6 Election Study is so large. Is that what you're saying?

7 A. I -- I don't think so. I think -- I think
8 you're close.

9 Q. Thank you.

10 A. Yeah. I think you're close.

11 So if Latino Decisions and -- had more
12 respondents, right, they may also, right, have gotten a
13 bigger sample of younger voters as that sample size
14 increased. They may not have, right, but the -- and,
15 again, right, that you could do this -- so here's --
16 here's what I think you want me to say, okay? I'm going
17 to give you what you want. Right.

18 So on the survey, right, you can pick,
19 right, you can -- you can drill down to a really small
20 subgroup and then say, Oh, there's only a couple people
21 here representing all of them and that's a problem. And
22 I think that that's true. Right. But the key is, is
23 what's the subgroup and how far do you have to drill
24 down, right. If you're -- if -- and so I think that 18
25 to 29-year-olds on the Georgia purge list from no

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1 contact, right, is different than voters in the whole --
2 in all of America born, you know, before 1926 or
3 whatever. Right.

4 And the problem would correct itself if
5 the sample size were bigger -- well, it might correct
6 itself, right. He still -- he still might oversample
7 elderly Americans. But as the sample size increases, so
8 would presumably, the number of 18 to 29-year-olds that
9 Latino Decisions would reach and, therefore, right,
10 that's -- that would -- that would be good, right?

11 But you could always -- if there were
12 other variables you could continue to point out, but in
13 smaller and smaller subgroups and say, Well, in this
14 particular subgroup there's only a handful of people.
15 Okay. So I think that the subgroups are reasonably
16 general -- general in my criticism, right.

17 And again, this is just for the court to
18 understand. Look, right, here -- here's what's going on
19 in the survey and the court can choose to accept it or
20 not. Right. But there's only 14 people called between
21 the ages of 18 and 29, right. And that's up to you,
22 Judge, right, whether you think that's sufficient or
23 not. And you know, is 143 or however many people, is
24 that enough?

25 So I'm just saying that the -- the overall

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1 sample size is small and at the -- at the very basic
2 general levels, right, some of these subsamples are very
3 small.

4 Q. Right. I appreciate that. I'm not exactly
5 sure that's what I wanted you to say. But I appreciate
6 that.

7 I'm trying to understand why the American
8 National Election Study is a good thing to rely on when
9 it has only 18 -- in your view, is a good thing to rely
10 on when it has only 18 respondents from an age category
11 when Professor McDonald's survey is a bad thing to rely
12 on in your view because it has only 14 respondents from
13 a particular age category. And the I think the answer
14 is that the sample size is too small, which is your
15 first criticism and I think I understand that. But I --
16 it strikes me that the answer to explain the -- the
17 tension I'm having trouble with, isn't just a sample
18 size issue, you're saying it's something else.

19 Is it that, you know, there are a bunch --
20 there aren't that many really old people and so we think
21 that 18 is a better number relative to the small set of
22 really, really old people as an absolute number? I
23 guess I -- I'm sorry, I'm still not -- I'm not
24 understanding why 18 is big enough for the ANES, but too
25 small for Professor McDonald.

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1 A. All right. Let me try it a different way. I
2 think it's telling that Professor McDonald didn't pick
3 the 18 to 29-year-old group in the American National
4 Election Study to use to criticize my criticism. Right.
5 He picked a very, very small group, right, of elderly
6 Americans who are -- all who, one, right, are less
7 numerous than people in younger categories, as we all
8 know, and also probably less likely to take a survey.
9 Right.

10 When I'm 90, I know for sure when somebody
11 comes to ask me a survey about anything, I'm going to
12 tell them to get out of my yard. Right. So that's the
13 problem with -- with the example. Right. I mean I -- I
14 gave you what you wanted in the sense that I said that
15 yes, this is a small number -- 18 is a small number and
16 I wish that were higher, but the ANES is much bigger
17 overall, right, and I think that the subgroup that he
18 picked is smaller relative to the total population and
19 the subgroup that I'm criticizing him for in his sample,
20 so there are differences between the two.

21 Q. Although is the -- is the size relative to
22 the -- what's the right comparison? Is it the number of
23 people in that demographic group relative to the
24 population as a whole or the number of people in that
25 demographic group relative to the size of the population

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1 you're trying to sample? Did I ask that well enough?

2 A. Yes. It's -- it's the latter. Right. It's
3 what -- what's the analysts interest in it.

4 Q. Right. And so, you know, whether the ANES --
5 is that how one refers to it?

6 A. Yes. We don't say -- I won't even say ANES is
7 a word, but we always say ANES.

8 Q. Right. Is the ANES then, in your view, only
9 useful if the number of people in that age category is,
10 I guess, proportionate to the 18 respondents in this
11 same -- let me back up. This is a horrible question.
12 Strike all that.

13 Your point is that there aren't that many
14 really old people and that really old people won't do --
15 won't answer surveys because they've got better things
16 to do like telling people to get off their lawn?

17 A. Uh-huh.

18 Q. The number of people in the 18 to 29
19 demographic who are on the no contact list, right, it's
20 not the 18 to 29-year-old people in the population as a
21 whole that matters, it's the number of 18 to 19 -- 18 to
22 29-year-old people on the no contact list, right?

23 A. If that's what the analyst is interested in,
24 which I thinks that is.

25 Q. Right. Do we -- do you -- I mean, it strikes

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1 me you're making a claim right now that the ANES -- I
2 assume you're making a claim that the ANES is okay
3 despite the 18 respondents in that category, right?

4 A. Yes. Again, I think that we can always pick
5 subgroups, right, and then concern -- then make
6 ourselves concerned that maybe this sub-sub-sub-group
7 isn't well -- doesn't have a big enough subsample,
8 right, to represent it overall. Okay.

9 So do I wish there were more people,
10 respondents in that age group in the ANES, sure I do.
11 Right. More is always better. And so -- so that's
12 where I'm saying I'm trying to give you what you want.
13 The 18 number, I do wish the ANES was bigger, but I
14 think that he's picked a sub-sub-sub-group where the --
15 it's necessarily going to be a smaller number, right.

16 Imagine if we picked left-handed
17 libertarians, right, living in -- on the southern Oregon
18 coast, right, that were born in February, right. Oh,
19 there's only one of them, right? Yeah, so there --
20 there is only one of them. But the subgroup is so
21 specific, right, that that doesn't matter. So -- so --
22 but like I said, that age group, right, isn't that --
23 isn't as specific as my example, but it's more specific
24 and it's going to be necessarily be smaller than the 18
25 to 29-year-olds, I think.

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1 Q. Do you know how many American voters fall into
2 the age category that we're talking about in the ANES?

3 Were there any --

4 A. I don't.

5 Q. You don't?

6 A. I don't -- I don't -- I don't know off the top
7 of my head how many people are -- in 1911, that's
8 like -- so this is like -- these people are 74 -- these
9 people are between 94 and 109, I think, by my rough
10 math. That's the subgroup that he picked, right.

11 Q. They're really old?

12 A. Very, very old. How many people -- Americans
13 are over the age of 94, I have no idea off the top of my
14 head, but it's a much smaller age group than any other
15 age group unless you're older than 115, right.

16 Q. It's small.

17 A. Thank you.

18 Q. There aren't that many variable people, yes.
19 But I guess your -- in -- in order to assess the --
20 whether the 18 number is a problem, why don't you have
21 to know the number of Americans who fall in that age
22 group?

23 A. Because sampling is sampling, right. I mean
24 like I said, it doesn't matter for -- just like it
25 doesn't matter whether you're interested in the whole

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1 nation or just Georgians on the no contact list, right,
2 are -- are calculations for the -- are power
3 calculations for the sample size you need in order to
4 make certain -- you know, how big your margin of error,
5 the math is always the same. Okay.

6 And so -- and I don't need to know
7 specifically because I -- I have knowledge -- general
8 knowledge like anybody else, right, that there aren't
9 that many people in America between -- that vote or the
10 America National Election Study is actually interested
11 in nonvoters too so strike the voter part. People
12 between the ages of whatever I've said, I mean
13 incredibly old people. Again, I think if he wanted to
14 be serious, he should have told me what's the number of
15 people in the 18 to 29-year-olds in 2016. Maybe I'll
16 look that up between now and the trial.

17 Q. Okay. We can move on.

18 A. Okay.

19 Q. Give me a second. Thank you.

20 Professor McDonald looks at some specifics
21 from two NCOA database circuits, right, the target smart
22 and L2?

23 A. Yes.

24 Are we on his first report or second
25 report?

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1 Q. We were on the second report, going back to the
2 first report.

3 A. Okay. So we're on his first report.

4 Q. Yes.

5 A. Okay. Yes, he uses two vendors.

6 Q. And I think we might have talked about this
7 earlier. Those searches found what, the 8 -- 59,866
8 people on the no contact list who did not submit NCOA
9 forms, right? That is on Page 13, I believe. Actually,
10 that is on Page 14, but my notes are based not on the
11 blue numbers.

12 A. I was on the supplemental report, we're on his
13 original. Okay. Page 14 of his original report.

14 Q. We're in that right above survey of purged list
15 reference, the paragraph right above that.

16 A. Yes, sir.

17 Q. And your report, as I understand it, doesn't --
18 you don't disagree with that conclusion?

19 A. I don't think I write about that in my report.

20 Q. Not saying you agree, you just -- your opinion
21 is not that that's wrong?

22 A. Right. Correct.

23 Q. And you did not dispute Professor McDonald's
24 conclusion that at least those 59,000 people and change
25 who were purged for no contact haven't moved their -- or

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1 they haven't moved their address?

2 A. Well, I don't -- I don't know, but I -- I think
3 I -- I do address this slightly in that, you know, in my
4 report I talk about no contact and NCOA are two totally
5 separate, completely independent processes.

6 Q. Yeah.

7 A. And so making the comparisons between the two
8 groups, I don't know.

9 Q. That is exactly right, you do. Thank you for
10 the awesome transition.

11 A. Okay.

12 Q. So you say no contact does not mean someone
13 necessarily moved, right?

14 A. That's correct.

15 Q. It is possible to have no contact and to not
16 have moved, right?

17 A. Of course.

18 Q. And you wrote in your report that you weren't
19 surprised to find that many people who were moved to
20 inactive status due to no contact could be found at the
21 same address, right?

22 A. Correct.

23 Q. That didn't surprise you?

24 A. I mean there's going to be people that stop
25 voting, there's going to be people that don't have the

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1 time to vote for a couple successive elections or
2 whatever. So the fact that some of them still live in
3 the same address, I don't think is a surprise.

4 Q. So for a minute, let's assume that you got to
5 design this (inaudible) from scratch?

6 A. You cut out. Say that again, I'm sorry.

7 Q. Let's assume for a minute that you had the
8 power to design a list maintenance process from scratch,
9 right?

10 A. Okay. Okay.

11 Q. Your goal, your only goal is to make sure that
12 people who have, in fact, moved are taken off the list.

13 A. That's my goal?

14 Q. That's your only goal --

15 A. Okay.

16 Q. -- people who have moved only.

17 A. Okay.

18 Q. And then it looks like that using the no
19 contact list would not be a terribly effective way of
20 reaching that goal; is that right?

21 A. I think that -- that national change of address
22 more directly addresses it, but the no contact list
23 would also catch some as well. But it was going to
24 catch a lot of other people that haven't moved.

25 Q. Right. So if your goal is to get rid of all --

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1 all and only the people who moved, the NCOA would be a
2 more effective way to do that?

3 A. That -- that seems -- that seems right to me.

4 Q. And you know, this -- everybody's real worried
5 about -- let me strike that.

6 So your opinions with respect to Professor
7 McDonald, is it the case that the only opinions you've
8 got about his work in this case are the ones that are
9 contained in your report and that we've talked about
10 here today?

11 A. Yes, as I sit here today, yes.

12 Q. Great. There's no other October surprise
13 opinion concerning Professor McDonald?

14 A. No, sir, not right now.

15 MR. KAISER: Okay. I am going to move on
16 to talk about Professor Herron now. I didn't know if
17 you -- if anybody wants a break, if anybody wants a
18 break (inaudible) --

19 THE REPORTER: (Indicating.)

20 THE WITNESS: Brandy wants one. I'm
21 good -- I'm good to take a break.

22 MR. KAISER: All right. Why don't we go
23 off the record.

24 THE VIDEOGRAPHER: Okay. We are going off
25 the record at 12:59 p.m. Central. We're off.

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1 (Break was taken.)

2 THE VIDEOGRAPHER: We are back on the
3 record at 1:14 p.m. Central Time. Please proceed.

4 Q. (BY MR. KAISER) Professor Brunell, so before
5 we talk about Professor Herron, I just want to go back
6 on the sample size question and talk to you a little bit
7 more on -- I think this will be pretty quick.

8 The sample size for the ANES, right, is a
9 few thousand. And its sampling a population of between
10 what, I think you said 100 million to 200 million; is
11 that right?

12 A. Yes.

13 Q. The sample size for Professor McDonald's survey
14 was 142 and he was sampling a population of 90,000ish;
15 is that right?

16 A. Correct.

17 Q. I think I asked you if the sample size needs to
18 be bigger or smaller, depending on the size of the
19 population you're sampling. Do you remember that?

20 A. I do.

21 Q. I believe your answer was no; is that right?

22 A. Correct, because the math is the same.

23 Q. Although, surely, at some point, that has to
24 hit -- there's got to be a bound on that, is that -- I
25 mean if you -- I mean, a 100 organizations and you have

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1 a sample size of 92, you would have more confidence than
2 if you were sampling 100,000 people and you've got a
3 sample size of 92, right?

4 A. Well, I would just get the other eight and say,
5 Hey, I've talked to everybody.

6 Q. Well, some people don't want to talk to you.
7 But anyway. Everyone wants to talk to you, of course.
8 But assuming that, isn't it true that if you've got a
9 population of 100 and you're able to sample 92, you will
10 have more confidence in that survey than if you've got a
11 population of 10,000 and you're able to survey 92?

12 A. It's not really a survey, you know what I mean?
13 Like you're -- you're talking to everybody except the
14 people that you can't find -- you know what I mean? So
15 I get what you're saying, but the math, right, our
16 margins of error are the exactly same if that our total
17 population is 100,000 or 100 million.

18 Q. Right. So it's your opinion there is -- for
19 survey purposes, there's no relationship between the
20 size of the sample you need and the size of the
21 population you're sampling?

22 A. I'm not going to make a blanket statement like
23 that, but if you -- if your -- if your population is
24 only 50 people, then a survey makes less and less,
25 right, because we do serve them because talking to 100

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1 million people --

2 THE REPORTER: You both are breaking out
3 on me quite a bit. Is that happening to anyone else?
4 So on the record, if -- and I'm okay with that if you
5 are.

6 MR. KAISER: Why don't -- why don't we see
7 how it -- whether it keeps happening.

8 THE REPORTER: Okay.

9 Q. (BY MR. KAISER) Professor, I'm sorry, you
10 were -- do you want me to ask you a question? Or do you
11 want to go back to talking?

12 A. I -- I -- I can sort of repeat what I just
13 said.

14 Q. Okay. I think I might be able to summarize it
15 in a way that's productive for everybody.

16 A. Okay.

17 Q. There are some cases where you're trying to
18 figure out something about a very small population
19 where, if you're asking a subset of them, it's not
20 really a survey in the way that statisticians or
21 political scientists or social scientists probably think
22 of surveys. But when you're talking about surveys, your
23 view is -- surveys in the way that statisticians do,
24 your view is that the sample size that you need does not
25 bear any relationship to the size of the population that

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1 you're sampling?

2 A. That is not my view. That is the view. That's
3 the math. Right. The -- the margins of error -- the
4 relationship between the margins of error and size of
5 the sample do not vary based upon what your total
6 population is.

7 Q. Okay. I think I've got a clear answer. Thank
8 you very much. With that, let's move to Professor
9 Herron.

10 A. Okay.

11 Q. So Professor Herron filed a report in this case
12 on February 18th, 2020. Let me mark that as Exhibit 8.

13 (Exhibit No. 8 was marked.)

14 Q. (BY MR. KAISER) Do you have that in front of
15 you?

16 A. I do.

17 Q. And then you filed your response to the same
18 report that you responded to Professor McDonald in,
19 right?

20 A. Correct.

21 Q. And then Professor Herron filed a supplement on
22 April 9th, right?

23 A. I have all three of those files open.

24 Q. Great. And let me mark the supplemental as, I
25 guess, Exhibit 9.

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1 (Exhibit No. 9 was marked.)

2 Q. (BY MR. KAISER) Okay. Professor Herron, what
3 is your opinion of him as a scholar?

4 A. The same as the other two. I'm -- I'm not
5 going to -- I don't bad talk any of my colleagues in the
6 discipline, ever -- well, at least, not on the record.
7 And I don't think Michael and I have ever met in person.
8 If we have, it was a long time ago. I know Dan and
9 Michael personally and I wouldn't -- Michael and I don't
10 know each other personally, but I certainly -- we
11 certainly know each other professionally and he -- he's
12 an excellent scholar.

13 Q. And, you know, the part of your report that
14 responds to his report, I guess same question I've asked
15 with the last two experts, what did you do to prepare
16 your response?

17 A. I read his report. And I don't recall if I
18 was -- I assume I was given the data, but I don't recall
19 if I was or not. I don't think that I opened -- I -- I
20 don't know if I ever opened or certainly I don't recall
21 doing any meaningful analysis on his original data. I
22 think I was responding to his summaries and his main
23 points in his report.

24 Q. So is it fair to say that you are -- you didn't
25 do original -- and you didn't do analysis of the data

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1 that he talks about you responding to the things he
2 wrote in his report; is that fair?

3 A. I think that's fair. I didn't try to replicate
4 what he did like I did with Professor Smith.

5 Q. Thank you.

6 And you don't -- as I understand your
7 opinion, you don't dispute the accuracy of the data he
8 relied on or the -- the accuracy of his analysis of that
9 data; is that right?

10 A. That wasn't part of my portfolio to criticize.

11 Q. Sure. Sure. No. Fair enough. Fair enough.

12 You're not saying it's accurate, you're
13 not saying it's not accurate --

14 A. Right.

15 Q. -- you're just not saying it's not accurate?

16 A. I wasn't asked to respond to the accuracies or
17 inaccuracies.

18 Q. Okay. Let me go to your report to Page 4.

19 Let me know when you're there. Are you
20 there?

21 A. I am.

22 Q. So at the bottom, you write, Before getting to
23 the specifics, it's important to note that decisions
24 regarding whether to move, open or close a polling place
25 is made at the county level. Just moving over to the

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1 following page. The State of Georgia is not responsible
2 for these decisions.

3 Is that -- did I read that right?

4 A. You did.

5 Q. Is that your opinion?

6 A. That's my understanding.

7 Q. Okay. Who -- where did you get that
8 understanding?

9 A. I think in discussions with counsel and with
10 the Secretary of State's office.

11 Q. Did you do any independent research to verify
12 that?

13 A. I know I'd -- I read some articles at some
14 point about, you know, closures in specific counties.
15 And so I did at some level, yes.

16 Q. Okay. Do -- do you know what those articles
17 were?

18 A. I don't recall off the top of my head. I feel
19 like there was one about Gwinnett County closures, if I
20 remember correctly. But these were newspaper articles
21 and there was nothing in there to led me to believe that
22 this wasn't a county-based decision.

23 Q. Sure. So let me just kind of explore the level
24 of your knowledge about that a little. And with these
25 questions, of course with any question, if you don't

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1 know, just tell me you don't know.

2 You know, if a county official decided to
3 close all of the polling places, all of the places where
4 people vote the day before the election, could a state
5 official in Georgia -- state elections official in
6 Georgia do anything to prevent that?

7 A. I don't --

8 MR. TYSON: Objection, form. That calls
9 for a legal conclusion.

10 THE WITNESS: Oh, sorry.

11 Q. (BY MR. KAISER) What's your understanding of
12 whether a state elections official in Georgia could
13 prevent a county official from closing a polling
14 location the day before an election?

15 A. Yeah, I don't -- I don't know the specifics in
16 the -- the Georgia constitution or in the statutes about
17 how the -- what remedies are available to the state at
18 that particular time, but I imagine something would
19 happen.

20 Q. And, you know, in a similar vein, if a -- if a
21 county decided let's -- let's close all of the polling
22 places where the voters are -- majority -- where
23 majority of the voters are one race or another, would a
24 state have any ability to -- what's your understanding
25 of whether the state would have any ability to prevent

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1 that?

2 A. Same answer as the last one, I don't -- I
3 certainly know that they may get in trouble at the
4 federal level with the Voting Rights Act or something
5 like that. And at the state level, I'm not entirely
6 sure.

7 Q. Okay. You don't know one way or another
8 whether the Secretary of State can stop that?

9 A. I don't -- I don't know what legal authority
10 they have to do that.

11 Q. Okay. And have you -- as a part of your work
12 preparing your report and preparing for this deposition,
13 have you looked at any of the training materials put
14 together by the Secretary of State's office?

15 A. I did not.

16 Q. Do you have an understanding of whether the
17 State of Georgia is -- state elections officials in
18 Georgia are informed when a county -- or when a polling
19 place is going to be changed?

20 A. I -- I assume they're informed, but I don't
21 know that to be a fact.

22 Q. Now, when you say the State of Georgia in that
23 language I just read, what entity are you referring to
24 specifically?

25 A. I would include the executive -- I'm going to

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1 include the whole -- the executive and legislative
2 branch, in particular, when I'm talking about that.

3 Q. Okay. Would you include the State Board of
4 Elections?

5 A. Yeah -- yes, I would include the -- the
6 bureaucracy, which I assume is part of the -- the
7 executive branch.

8 Q. Okay. So you write sort of after that language
9 that I just read, Thus -- we're at the top of Page 5 of
10 your report, Thus from the start, Professor Herron's
11 report does not add any value to considerations related
12 to the policies of the State of Georgia.

13 State of Georgia is italicized, I take it,
14 for emphasis?

15 A. Correct.

16 Q. What do you mean, it doesn't add value?

17 A. Well, the -- if these decisions are made at the
18 county level and the counties -- it's my understanding
19 that the state is the defendant in this case and not the
20 counties. And so writing a report for something that
21 the counties do that the state doesn't do is orthogonal,
22 right, doesn't have any impact on what this particular
23 lawsuit is about.

24 Q. And that depends on an assumption about the
25 state's ability to interact with a polling place closure

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1 or relocation decisions, right?

2 A. It's about -- I am assuming that these
3 decisions are made, polling locations, opening
4 locations, closures, is made at the county level.

5 Q. Right. And if that assumption is wrong, then
6 the conclusion that it doesn't add value is also wrong;
7 is that right?

8 A. If it -- if the state is making all of these
9 decisions, then this is -- then this does add value to
10 this case.

11 Q. Or if the state is making some of the decisions
12 or has a role in the decisions, then it may or may not
13 add value?

14 A. If it -- I'll give you may or may not.

15 Q. I mean it's a -- you -- you've set out a
16 conditional, right? If the State of Georgia has no
17 control, then a report about something the State of
18 Georgia has no control about adds no value to assume it
19 against the State of Georgia; that's your position?

20 A. Yes.

21 Q. And, you know, if the antecedent is false, we
22 don't know anything about the truth of the consequence;
23 is that right?

24 A. Or what -- that's true, right. If the -- if
25 the state is making all of these decisions, then this

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1 would be relevant to the case.

2 Q. Sure. Cool.

3 All right. So you -- you fault Professor
4 Herron on Page 5 of your report. I'm going to this --
5 the paragraph right under "Research on turnout and
6 reprecincting," you fault him for relying on only two
7 published studies for the proposition that when a voter
8 is reassigned to a new polling location, the likelihood
9 of voting decreases?

10 A. It was only -- it was two articles about --
11 they were very specific in the scope of their research.
12 One was about managing county -- one -- one county in
13 Florida and the other one is about a single county,
14 Los Angeles County in California. So there's only two
15 and they're very, very specific studies, not -- there's
16 not -- not even statewide, these are only countywide
17 studies.

18 Q. And then in his rebuttal report, Professor
19 Herron points to a third involving, I believe, voters in
20 Atlanta. Did you see that?

21 A. I did.

22 Q. In your -- why don't we do this. What's the
23 point you're making by saying there were only two or
24 three studies?

25 A. That there isn't that -- the extent -- or the

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1 existing research, at least the ones that Professor
2 Herron cited, right, there are limitations to these,
3 right, and the court should understand it. That's it,
4 right. So if the court decides that, Hey, two cases
5 encompassing Manatee County, Florida and Los Angeles
6 County, California are enough for me, then that's fine.
7 But the judge should know that there are -- that these
8 are limit -- very limited studies. These aren't
9 nationwide studies, right. These aren't even statewide
10 studies and they're -- and there isn't that many
11 studies, right.

12 The number of articles written about voter
13 turnout number in the tens of thousands, all right -- or
14 I don't even know how many there is, right. We've
15 killed a lot of trees writing about voter turnout. So
16 this is a -- this is a small section of political
17 science, right, which is -- that's not Professor
18 Herron's fault at all, right. He might be citing
19 everything that's ever been published out there, and
20 that's fine. But these are limited studies.

21 So that's -- that's the point I'm trying
22 to make, right. And it's up to the judge, you know, is
23 this enough or is this not enough.

24 Q. Are you aware of any studies that say that
25 moving a polling place increases turnout?

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1 A. Not off the top of my head, no.

2 Q. Are you aware of any studies that say that
3 moving a polling place has no effect at all in turnout?

4 A. Not that I'm aware of, but polling places do
5 have to be moved. All right. That's the fact -- the
6 reality is polling places have to be moved.

7 Q. Okay. And -- and, you know, Dr. Herron does a
8 lot of data analysis in his work. He does data analysis
9 in his report. Does that analysis depend on the studies
10 that he cited being accurate or not?

11 A. No.

12 Q. So on Page 7 of your response, you write in
13 that last paragraph, If we restrict our analyses
14 strictly to proportions, Professor Herron's analyses are
15 inconclusive. There are some metrics in which the
16 population of black voters is slightly higher than white
17 voters, although the reverse is true as well.

18 You see? Do you see that?

19 A. Yes, that's what it says.

20 Q. What metrics are you talking about that show
21 that the reverse is true?

22 A. I wish I would have cited them because now I'm
23 going to have to dig.

24 Okay. So there's one -- the first example
25 that I can find -- I'm just scrolling through this

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1 report quickly to try to look for instances of this.
2 But if you look on -- well, they match this time, both
3 the blue number and the real number are both 50, 5-0,
4 Table 2, right, at the cutoff for 95, there are -- the
5 black closure rate is lower than the white closure rate.

6 Q. And what does that table -- what's that table
7 say? What's that table show?

8 A. He's looking at racially homogenous block
9 groups, all right, so he --

10 Q. What's a racially homogenous block group?

11 A. It's a block groups that is almost -- is
12 comprised almost entirely of one race or another --

13 Q. And so --

14 A. Of one race. Sorry.

15 Q. Right. And so on the left-hand column of
16 Table 2 on Page 50, he's got numbers that go down from
17 100 to 95?

18 A. Correct.

19 Q. What are those numbers?

20 A. That's the cutoff that he uses. So the
21 percent -- that's the percent of homogenated, right. So
22 95 means that 95 percent of the block group was either
23 black or white or -- so two separate groups, right?
24 95 percent black and then 95 percent white.

25 Q. And this is a -- an allocation by polling

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1 place; is that right?

2 A. Well, it's an analysis of the rates of polling
3 place closures, but the geographic unit of analysis are
4 block groups.

5 Q. Right. Thank you.

6 And what's a block group?

7 A. A block group, that's a census term about a
8 group of blocks. Right. Like an actual block in a
9 tract of homes, right. So there's a -- it's a -- it's a
10 census unit of geography.

11 Q. Right. And on this chart, when it says the
12 cutoff is -- for the ones where the cutoff is 100,
13 right, and there are 47,600 blacks in that second
14 column --

15 A. Yes.

16 Q. -- what is that? Is that 47,600 people?
17 Blocks? Polling places?

18 A. That's people, right. So they found a certain
19 number -- we don't know how many block groups there are,
20 but that's the number of voters in a -- in block groups
21 that are 100 percent African-American.

22 Q. Right. And then the closure rates in the --
23 sort of skipping over two columns -- well, let me back
24 up.

25 I take it where it says "whites" and then

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1 there are -- you know, in that next column, it's the
2 same thing except just for white people instead of black
3 people?

4 A. That's right.

5 Q. And then you go to the next column, Black
6 closure rate, what's black closure rate?

7 A. That's the percent of -- hang on.

8 Q. Are you reading his report?

9 A. Yes. So the -- wait, hang on.

10 Okay. So I can't find it right now in his
11 report, but the closure rate, I assume, was the
12 percentage of voters in that group that had their
13 polling place moved or closed. But it could also be the
14 percentage of polling places that were closed. And I'm
15 trying to -- because it says "Polling place closure
16 rates." So I don't know if that's a percentage. And he
17 doesn't say -- I can't see it in his narrative whether
18 that means that the percent of polling places closed or
19 that's the percent of voters that were affected by
20 polling place closure, but I would -- I would think it's
21 one of those two things.

22 Q. Okay. Fair enough. But I guess at this point,
23 looking at this table, you're not sure exactly which of
24 the two it is right now?

25 A. I can't -- I don't see which one -- I don't see

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1 an explanation in his narrative which one it is at this
2 very moment in time. And logically, I think it could be
3 either one of those two.

4 Q. Sure.

5 And sort of going back to the -- the
6 larger point we were at a second ago, you said that, you
7 know, some of the metrics are -- you know, support a
8 conclusion that the proportion of -- white voters who
9 are subject to a polling place closure or relocation is
10 higher than black voters, that's the line I find support
11 for from your report?

12 A. Correct.

13 Q. (Inaudible) right now, right?

14 A. No, we are through with this table. We don't
15 know specifically because he doesn't -- I can't find it
16 right now in there whether it's the percentage of voters
17 we had or the passenger of polling places, both of them
18 get at roughly the same idea. But I do know what the
19 table means, but I don't -- I can't find specifically
20 which it is, so I don't want to make a mistake and say
21 it's one and not the other.

22 Q. Fair enough.

23 Are there other metrics in the report?
24 Actually, before -- before you do that, let me ask you
25 another question. Because, you know, Professor Herron

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1 responded to your report, right?

2 A. He did.

3 Q. And you've seen that?

4 A. I have.

5 Q. And so he writes -- I'm looking at his report
6 now on Page 23, Paragraph 50.

7 A. Okay.

8 Q. Of this criticism of yours, he writes, Given
9 the seriousness of this charge, I would have expected
10 Dr. Brunell -- Brunell -- I'm sorry -- to have carefully
11 gone through my results and to have explained in detail
12 why some results show that white registered voters were
13 disproportionately affected by polling place closures
14 and other results the opposite.

15 I'm not exactly sure what the "other
16 results the opposite," what the syntax on that is, but I
17 think we get to point of that sentence.

18 Dr. Brunell did not do this, which
19 undermines his charge that my results are inclusive.

20 Do you see that?

21 A. I did.

22 Q. So I guess, what do you think of that criticism
23 of your report?

24 A. I think it's precious. So one of my criticisms
25 of all these reports is that there is no causality here

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1 about -- none of them are making arguments about a
2 racial causality, you know, why -- why are they
3 seeing -- so they're pointing out, Hey, there's these
4 racial differences, and none of them bother to look for
5 causality. And then Herron criticizes me for not
6 finding causality, right. Well, that's my criticism,
7 right.

8 He's on the plaintiff's side so he's
9 supposed to do that, right. And then I can respond to
10 that. But the fact that he doesn't look for causality
11 and then he criticizes me for not looking for causality,
12 I thought it was interesting, right, and misplaced.

13 Q. Well, why do you think he's saying you should
14 look at causality?

15 A. Well, he says -- he -- it's to show why -- to
16 explain in some detail why some results show that white
17 registered voters were disproportionately affected by
18 polling places.

19 Q. Oh, I see. Okay. If we read it so it's not
20 asking for a cause for why voters of one race or another
21 were affected by the polling place location, but rather
22 a justification or a reason for your -- or an
23 explanation for your view that some metrics support that
24 white voters were disproportionately affected by polling
25 place locations, right? Do you understand what I mean

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1 by reading it that way?

2 A. Not really. I mean I think that his analysis
3 shows that sometimes black voters are affected more, and
4 his analysis showed that sometimes white voters are
5 affected more. I pointed that out, right, that these
6 are -- these are inconsistent with one another and,
7 therefore, makes conclusions about how these actions
8 affected racial subgroups less convincing. And I
9 don't -- I see no problem with that whatsoever.

10 Q. Okay. I guess, let me ask you this. So you
11 write, There are some metrics in which the proportion of
12 black voters is slightly higher than white voters, the
13 reverse is true as well, right?

14 A. Right.

15 Q. Then you write, The reverse is true as well. I
16 take it what you mean -- tell me if I'm wrong -- is
17 there are some metrics in which the proportion of white
18 voters is slightly higher than black voters?

19 A. Correct.

20 Q. You don't, in your report, on Page 7, tell us
21 which metrics, right?

22 A. I didn't.

23 Q. And right now, you've given us the one line
24 from Table 2 on Page 50. What else have you got?

25 A. I -- I'll continue going through the tables. I

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1 wish I would have listed them all for you. Okay.

2 Q. I do too.

3 A. But --

4 Q. Because to -- to sort of cut to the chase,
5 Professor, the way I read Paragraph 50 of the rebuttal
6 report is faulting you not for failing to come up with a
7 cause, but for failing to come up with an explanation.

8 A. How are those different? I'm sorry.

9 Q. Well, I mean let's -- it doesn't -- it probably
10 doesn't matter for these purposes. Let's move on.
11 Let's figure out what you've got that supports your
12 proposition that there are some metrics in which the
13 proportion of white voters is higher than black voters.

14 A. Okay.

15 Q. We'll go to Table 2.

16 A. Okay. Some of these tables later on, this
17 isn't exactly what I had in mind, I don't think. But
18 the -- you know, the effects of -- so I'm on like Page
19 73, 74, Tables 12 and 13, looks like -- I'm sorry?

20 Q. I interrupted you. Go ahead.

21 A. Oh. Looks like white voters are more affected
22 by polling place changes than African-American voters
23 are. Maybe I was thinking about that as well. But
24 those -- that's the only other example I could find in
25 going over his tables on the fly.

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1 Q. Those tables that you're looking at towards the
2 end, those are the ones that show when there's a polling
3 place moved, white voters then turn out -- they face a
4 higher drop in turnout percentages on election day,
5 right?

6 A. Hang on.

7 Q. Which table are you looking at?

8 A. Table 13 and 12. Yes, so like Table 12.

9 Q. Right. So those tables don't tell us anything
10 about the closure or relocation of polling places,
11 right? Those are turnout tables?

12 A. Those are turnout tables.

13 Q. The -- the -- so Professor Herron, in addition
14 to responding the way you felt was precious, also
15 responds to your statement in Paragraph 49 of his
16 report. If you'll go with me to Page 22, Paragraph 49.

17 A. Okay.

18 Q. And here, he says, With respect to the matter
19 of whether black registered voters were
20 disproportionately affected by polling place closures
21 compared to white registered voters, the
22 proportions-based results in Table 3, 5, 7 and 9 all
23 point in the same direction.

24 You see that?

25 A. I do.

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1 Q. Have you gone through the process of looking at
2 each of these tables and confirming that they point in
3 the same direction?

4 A. I have not.

5 Q. Okay. Well, let's -- let's do it together.

6 A. Okay.

7 Q. Page 53.

8 A. Yes.

9 Q. So you see Table 3?

10 A. I'm almost there.

11 Q. Let me know when you're there.

12 A. I'm there.

13 Q. Okay. So in this table, it's polling place
14 closure -- closure rates by race, right?

15 A. Correct.

16 Q. And it shows in that kind of center column
17 where it says "Registered Voters," the total number of
18 white voters who had their polling place -- sorry, the
19 total number of registered voters by race in the state,
20 right; is that how you read that?

21 A. Yes.

22 Q. And then the next column closed is the total
23 number of voters by race who had the polling place
24 closed?

25 A. Correct.

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1 Q. By that, you mean closed or moved, right?

2 A. Yes.

3 Q. And then percent closed is the last column,
4 right?

5 A. Yes.

6 Q. And that shows the percentage of the people who
7 had their polling place closed or moved of the total
8 number of voters of that race in the State of Georgia,
9 right?

10 A. Correct.

11 Q. And it says there that white voters had their
12 polling place closed -- sorry, 16.68 percent of white
13 voters had their polling place closed and 16.8 percent
14 of black voters has their -- had their polling place
15 closed, right?

16 A. Correct.

17 Q. Closed means closed or relocated, right?

18 A. Correct.

19 Q. 16.8 is higher than 16.68?

20 A. Slightly.

21 Q. Right. And then the next one is April 5 on
22 Page 55. So those are closure rates in black majority
23 polling places?

24 A. Let me just go back, I'm sorry, to Table 3, so
25 I think it's important to note the other -- so like the

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1 unknown, right, that these are the people that don't
2 self-report race is the highest. Then I kind of renew
3 my -- my criticism that, you know, these are largely one
4 race or another, then that would -- if we actually knew
5 the race of these people, then that might change all of
6 our conclusions based upon where they are to actually be
7 allocated.

8 Q. Sure. If all of the unknowns are white, then
9 the -- the difference would change, right?

10 A. Correct.

11 Q. And if all of the unknowns were black, then the
12 difference would change some more?

13 A. And they don't all have to be one race, they
14 just have to be --

15 Q. A majority of them, sure.

16 And we don't know one way or another what
17 the unknowns are?

18 A. Correct.

19 Q. Or if they're distributed evenly or if
20 they're -- we just don't know?

21 A. Nobody knows, as far as I know.

22 Q. Right.

23 Okay. So Table 5, Page 55.

24 A. Okay.

25 Q. It says the closure rates in black majority

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1 polling places, right?

2 A. Yes.

3 Q. So what this is looking at is when you've
4 got -- it's an analysis by polling place, right?

5 A. Yes.

6 Q. And so there are, according to this, 542 black
7 majority polling places, right?

8 A. Yes.

9 Q. And 1,974 not black majority polling places?

10 A. Correct.

11 Q. And the closure rate for black majority polling
12 places is 20.3?

13 A. Yes.

14 Q. And non-black majority polling place is 17.68,
15 right?

16 A. Yes.

17 Q. And 20.3 is higher than 17.68?

18 A. It is indeed.

19 Q. Let's go to Table 7 on Page 56.

20 Are you there?

21 A. I am.

22 Q. So this is closure rates by black super
23 majority polling places, right?

24 A. Wait, this -- did you say Table 7?

25 Q. I'm sorry. You're right. I did. And then I

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1 turned to Table 6.

2 A. Okay.

3 Q. You know what, we just found a labeling mistake
4 in Professor Herron's report.

5 A. Okay.

6 Q. I think this is supposed to be -- in his
7 supplemental report, I think he meant to say Table 6
8 instead of Table 7.

9 A. We all make mistakes.

10 Q. All right. So this is closure rates in black
11 super majority polling places, right?

12 A. Yes.

13 Q. And this differs from the last table we looked
14 at in that this is not black majority polling places,
15 this is black majority super polling places, right?

16 A. Correct.

17 Q. And here, Professor Herron uses 60 percent as
18 the cutoff for blacks super majority district, right?

19 A. That's what he says.

20 Q. And 20.73 of the black majority -- super
21 majority polling places were closed, right?

22 A. Yes.

23 Q. And 13.76 of the not black majority -- not
24 black super majority polling places were closed, right?

25 A. Correct. Correct.

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1 Q. And 20.73 is higher than 17.76?

2 A. Every day.

3 Q. Every day.

4 Last one, Page 61. This is the -- are you
5 there?

6 A. Yes.

7 Q. So this is the distribution of rates and new
8 polling place status among all of the voters who didn't
9 move in 2014 and 2018. Does that make sense? Is that
10 your understanding?

11 A. Okay. That's what it appears to say.

12 Q. Cool.

13 And we see that the difference between new
14 place versus not new place for white voters is .89,
15 right?

16 A. That's right.

17 Q. And the number of black voters, it's -.62; is
18 that right?

19 A. That is correct.

20 Q. Professor Herron's conclusion is that all of
21 these tables point in the same direction towards his
22 conclusion that black voters were disproportionately in
23 polling places that moved or closed relative to white
24 voters, right?

25 A. That's his position, yes.

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1 Q. And do you dispute that these tables do support
2 that proposition?

3 A. No. I mean the -- there were differences and
4 it supports the proposition that blacks, as percentages,
5 were slightly more affected by it. But that's the main
6 point I make in my report is that we can't -- you know,
7 looking at a percentage is good, but if we looked at the
8 wrong number of voters, I think that adds, you know,
9 nuance to what's really going on. Right.

10 So if this is, you know, a strategy to
11 decrease the number of black voters, it's not -- it's
12 not a very good one because you're affecting far more
13 white voters than black voters in raw numbers, right, in
14 elections. Percentages are interesting, right. And I
15 appreciated him explaining percentages to me in his
16 supplemental report. But if we only look at
17 percentages, right, my point is, Hey, we could look at
18 the wrong numbers as well.

19 And so if -- again, if this is a strategy
20 to dilute black voters in a discriminatory -- in a
21 discriminatory way and to -- which I assume also means
22 at the -- to the benefit of white voters, this isn't a
23 way to go about it.

24 Q. So I appreciate that. We'll talk about that in
25 a minute. I guess what I'm --

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1 A. Okay.

2 Q. -- trying to figure out is this language you
3 had about the reverse being true. Each of the tables we
4 have looked at supports the proposition -- leaving aside
5 causation, bracket causation, each of these supports the
6 position that black voters were disproportionately
7 affected by a precinct relocation or closure relative to
8 white voters, right?

9 A. Those -- the tables that we just looked at do.

10 Q. Right. You had identified one table where
11 there was one line that suggested that for a certain
12 distribution of census blocks, there were -- there was a
13 different change. It showed a different trend.

14 Why is that chart or that calculation --
15 if you want to go back to it, we can -- more persuasive
16 than these charts that we've gone through?

17 A. I don't think I said it was more persuasive. I
18 just said that it's evidence, right -- I was trying to
19 be -- I was trying to summarize what I thought his
20 evidence showed, which was sometimes there are small
21 differences and indeed black -- for most of his results,
22 blacks are affected at a higher rate than white in terms
23 of percentages, but not in terms of raw voters by any
24 stretch of the imagination.

25 But there was some evidence in going

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1 through the table right now, we only found one, but
2 there is one -- at least one that showed that whites
3 were affected in terms of proportion at a higher rate
4 than blacks were. And so that was -- that's the point,
5 right, but my statement which is still true.

6 Q. But that one table we looked at, right --

7 A. Yes.

8 Q. -- that talks about a very narrow kind of
9 census block, right, and polling place changes that
10 affected that narrow kind of census block, right?

11 A. Yes.

12 Q. The tables we just looked at are tables that
13 show effects on voters, right?

14 A. Yes.

15 Q. And the question is less whether voting blocks
16 have had their voting rights infringed on because
17 they -- they don't actually have voting rights, right?
18 They're just blocks. But more whether voters have been
19 disproportionately affected based on rates or -- meaning
20 when you look at rates. I'm trying to say it in a
21 correlation way, not a cause way.

22 So when you -- when you look at the tables
23 in Professor Herron's report that look at voters and not
24 voting blocks, we -- we just walked through that all of
25 them support the conclusion that there's been a

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1 disproportionate effects on black voters and none of
2 them support the conclusion that there's been a
3 disproportionate effect on white voters?

4 A. I mean there are voters in the other table that
5 you don't like, right?

6 Q. It's not that I don't like them.

7 A. I mean the ones that we're talking about,
8 right, that -- that's my point, right. My point is very
9 simple, right, and I -- you know, you can try to walk me
10 down a road of 20 conditions to get me to agree to
11 something, but he's not always talking about all voters,
12 right. I mean like in Table 9, it's only about
13 nonmoving voters so we're talking about a subset of the
14 population.

15 And so my point is very simple that, you
16 know, that some -- and maybe it's only one. Right, we
17 can only one now. And if it's only one, I'm happy to
18 say there's only one bit of evidence that shows whites
19 were disproportionately affected than blacks were.
20 Right. But that's my only point, right, and that it
21 wasn't always in the same direction, right. And that
22 oftentimes the differences were very, very small. And
23 that's still true. All of that is still true.

24 Q. But the one you have pointed to, Table 2, is
25 not -- as I understand what you've said, not a table

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1 about voters, it's a table about block groups?

2 A. And voters live in block groups.

3 Q. Sure. But we've seen a whole bunch of tables
4 that compile the data based on voters?

5 A. Right.

6 Q. Looking at it all on voters -- and I guess I
7 could see how you can get from a block group to a voter,
8 doing some -- you know, winging it, estimating. But why
9 would you look at that on block groups instead of the
10 ones on voters?

11 A. I didn't -- I didn't make the table. Professor
12 Herron made the table, not me. And so I'm going off of
13 the evidence that he has provided to the court, right.

14 And so I appreciate you trying to parse
15 this down in such a way that -- that one table that I
16 pick doesn't fit with the others, but you know, I'm
17 just -- I'm not going to agree with it. There are
18 voters that we're talking about, right. And most of his
19 evidence -- you know, I'm happy to -- I'm not -- I'm not
20 here to -- to -- to pull the wool over anybody's eyes.
21 Most of the evidence points in the direction that
22 Professor Herron argues, right.

23 But there are -- there's at least one
24 that's inconsistent with his conclusion. And there may
25 be more that I just haven't found right now. And so

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1 that's all I'm saying, right, it's very, very simple,
2 and very straightforward.

3 Q. And -- and just so the record's clear -- and I
4 hear what you're saying. We're fine.

5 Just so the record's clear, the one table
6 you're looking at that supports the reverse inference
7 that you say applies in your report deals with block --
8 block groups, not voters, right?

9 A. It deals with voters as well. We're -- we're
10 not interested necessarily in block groups because --
11 we're interested in block groups only because people
12 live in them.

13 Q. Sure. Fair enough.

14 But the data -- the data in the table is
15 about block groups and then you can get to voters
16 because, you're right, voters live in block groups,
17 right?

18 A. Right.

19 Q. Excellent. We can move on.

20 Absolute numbers, you had wanted to talk
21 about this a second ago. Now let's talk about it.

22 On Page 6 -- I guess, as I understand your
23 opinion -- wait, let me back up because I think I
24 learned something --

25 A. Can -- can I -- can I just have one minute? We

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1 can go off the record if we want to, but I only need one
2 minute to go talk to my son?

3 Q. Oh, yeah, of course. Absolutely.

4 THE WITNESS: Give me just one minute and
5 we'll be right back.

6 THE VIDEOGRAPHER: Okay. We're going off
7 the record, if there's no objection, at 2:08 p.m.
8 Central Time.

9 (Break was taken.)

10 THE VIDEOGRAPHER: And we are back on the
11 record at 2:14 p.m. Central Time. Please proceed.

12 Q. (BY MR. KAISER) Okay. Professor Brunell,
13 let's look at your report on Page 6. Let me know when
14 you're there.

15 A. I'm there.

16 Q. So the first -- that first paragraph at the top
17 that -- I think it starts on the prior page, the last
18 sentence of that I think is the one you wanted to talk
19 about a minute ago, which is, While black voters are
20 affected at a slightly higher percentage than white
21 voters, there are more white voters affected by
22 repre- -- reprecincting decisions made at the county
23 level. Is that --

24 A. Correct.

25 Q. You were saying earlier that you believe that

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1 is evidence that this is not -- that there's no -- let
2 me back up.

3 Professor Herron has a lot of data about
4 correlations, right, about disproportionate effects,
5 right?

6 A. Yes.

7 Q. And mere correlations cannot establish on their
8 own causation in any cases, right?

9 A. Correct.

10 Q. And what I understood you to be saying a minute
11 ago is that when you had a causation question, you
12 believe that the raw numbers of voters affected
13 undermine a conclusion based on causation or -- and the
14 ENS (phonetic) increase in precinct changes?

15 A. I don't know if causation is necessarily
16 involved with my objection or not. I'm simply pointing
17 out that when we switch from percentages to raw numbers,
18 since whites make up a larger percentage of the state
19 than African-Americans do, that more -- when we're
20 looking at sheer numbers, there are more white voters
21 affected by reprecincting than there are black voters.

22 Q. Sure. But black voters, according to the
23 tables we're looking at, are disproportionately affected
24 by precinct closures or relocations relative to white
25 voters, right?

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1 A. Absolutely.

2 Q. Okay. And I guess that's what disproportionate
3 means, it means in proportion to the voters of other
4 groups?

5 A. That's correct. I mean but it doesn't mean we
6 can't look at the raw numbers as well and think
7 logically, what does this -- what does this entail,
8 right, for -- if -- you know, just in the same way if we
9 say 10 percent of Americans are -- you know, using his
10 example, are sick with COVID and 10 percent of people
11 that live in Luxembourg are getting sick at the same
12 rate, that were both -- Luxembourgers and Americans are
13 getting sick at the same rate, but there are far more
14 Americans sick than they are Luxembourgers because there
15 are more people in America.

16 That's -- again, this is -- this is simple
17 stuff. This isn't -- there's nothing tricky going on
18 here.

19 Q. Right. So -- so focussing on the raw -- on the
20 total numbers doesn't undermine the conclusion about the
21 proportionate numbers?

22 A. I mean I think it does. Like, if you're like
23 I'm only going to look at proportions, then it does.
24 But my point is you also need to look at raw numbers
25 because, again, if we're trying to dilute the voter --

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1 the votes of one race which will benefit the voters of
2 another race, then it should both be disproportionate,
3 but also shouldn't it affect more voters, right?

4 Because ultimately we're going to count
5 the votes.

6 And so it's not a very good strategy,
7 right, to slightly affect, right -- if there's some
8 grand scheme going on, it's not a very good one because
9 they're only slightly affecting black voters more and
10 they're affecting far more white voters in sheer
11 numbers. So then when we go to election day, what's
12 going to -- you know, what's the impact that's going to
13 have?

14 Q. Does that assume that there is one entity
15 coordinating where all of the polling place changes or
16 closures are?

17 A. No, I don't think so.

18 Q. But in the grand scheme, you know, normally you
19 sort of think there's a grand schemer, right, that's in
20 the head of schemers. You know, so I guess I think your
21 argument is that the raw numbers undermine the existence
22 of a grand scheme. But I -- I wonder if that's limited
23 to an explanation of the correlation that requires a
24 grand schemer?

25 A. That question, I have no idea what it means.

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1 So I think that question was too smart for me. I'm not
2 entirely sure what -- we've really gone down -- you
3 know, we're in a corner here and I don't -- I don't know
4 how to get out.

5 My point is simple, right. It's not about
6 the hypothetical grand schemer, whether there's one
7 original mover or not, right. It -- it's just -- it's
8 simply, Look, all right, if there is -- if there's
9 something going on here diluting the votes of one race,
10 right, it should probably consistently, right, and --
11 and -- and the difference should be presumably really,
12 really large, not minute.

13 And so I think all of these -- and -- and
14 the raw numbers should also probably make sense that
15 there's far more black voters affected by these things
16 than there are white voters, and that's not true.
17 Right. So I think all of these things combined, right,
18 sheds doubt on whether there's -- you know, whether
19 there's racial discriminatory practices going on here.

20 Q. And that doesn't -- that doesn't bear on
21 whether there are racially disproportionately effects?
22 It doesn't undermine the conclusion that there are
23 racially disproportionately effects, right?

24 A. In some of his analyses, there are indeed
25 racially disproportionate effects that affect blacks at

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1 high rates than whites.

2 Q. Right. And the total number of affected voters
3 by race does not undermine that proportional finding?

4 A. It does not, right, because they're two
5 separate things.

6 Q. All right. So let's turn to something you
7 wanted to talk about a minute ago that I didn't take you
8 up on, but we can talk about now, which is turnout. So
9 you write that -- where are we? We're on Page 6 of your
10 report.

11 A. Okey-doke.

12 Q. The very bottom, Professor Herron's analysis --
13 analysis. You see that?

14 A. I do.

15 Q. Professor Herron's analysis for election day
16 turnout for the 2018 election indicates white voters
17 experienced nearly twice as much drop-off in terms of
18 percentages relative to black voters. You see that?

19 A. I do.

20 Q. And -- and what you're talking about there is,
21 I take it, Table 12 on Page 73, but tell me if I'm
22 wrong.

23 A. I'm almost from.

24 Q. Sure. Take your time.

25 A. I think that's probably true, yes.

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1 Q. It's probably true that this is the table
2 you're talking about when you make -- write that
3 sentence?

4 A. I think so.

5 Q. And this is the table that deals just with
6 election day turnout, turnout only on election day,
7 right?

8 A. That's correct.

9 Q. Not the overall turnout for the election?

10 A. Correct.

11 Q. And what this shows is that turnout is down for
12 pretty much every group when a polling place moves or is
13 closed, right?

14 A. That's right.

15 Q. Do you remember the two studies we were talking
16 about at the very beginning of our conversation about
17 Professor Herron's report?

18 A. I do.

19 Q. And those two studies found that when you move
20 or close polling places, turnout goes down, right?

21 A. I believe they -- they did. I can't remember
22 the magnitudes, but I believe both of them did, yes.

23 Q. And so these findings are consistent with those
24 studies, right?

25 A. I would say that they are. I mean as far as I

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1 remember, yes.

2 Q. Sure.

3 Okay. And -- and if you look at Table 11
4 on Page 71.

5 A. Okay.

6 Q. This is 2018 turnout by race among people who
7 voted in 2014?

8 A. That's what it looks like.

9 Q. Okay. And you see that -- so what this looks
10 at is turnout for the whole election, not just on
11 election day, right?

12 A. I'm looking in his -- he doesn't say
13 specifically whether it does or not.

14 Q. You're right to pause. You're right to pause.
15 I got the wrong table.

16 A. Oh, okay.

17 Q. Sorry. Long day for all of us. I'm supposed
18 to be on Page 69, Table 10.

19 A. Okay. All right. I'm there.

20 Q. Yes. This is the turnout for the whole
21 election by race, right?

22 A. It's only nonmovers who are registered in both
23 2014 and 2018.

24 Q. Right. People who didn't move, but had a
25 polling place move?

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1 A. Well, I think it includes people that also did
2 not have a polling place move.

3 Q. Yes, you're right, the new place versus not new
4 place?

5 A. Correct.

6 Q. People who didn't move their address, their
7 house stayed in the same thing. And then for the non
8 new place, there wasn't a move in polling place and for
9 the new place there wasn't a polling place, right?

10 A. I believe that's correct.

11 Q. And what this shows in the last column for the
12 whole election day voting, not just -- for the whole
13 election voting, not just on day of election voting,
14 that there was a drop-off in turnout for both white
15 people and -- white voters and black voters, right?

16 A. And every other group too.

17 Q. And the drop-off for black voters was larger
18 than the one for white voters, right?

19 A. Yes, indeed, it is.

20 Q. All right. So we've -- I've asked you this
21 question with the last two experts. Aside from what's
22 in your report and what we've talked about today, do you
23 have any other opinions about Professor Herron that are
24 relevant to this case?

25 A. Not as I sit here today, I do not.

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1 Q. Okay. Great. Let me just ask you two other
2 brief things and then we'll probably wrap up.

3 You had talked about conversations you'd
4 had with folks in the Secretary of State's office?

5 A. Yes.

6 Q. And I think you said there were two
7 conversations?

8 A. That's my recollection.

9 Q. Those were by phone?

10 A. Correct.

11 Q. Do you know how many people were on the line
12 when you talked to them?

13 A. Well, the short answer is no. But both of them
14 had multiple people in the Secretary of State's office,
15 but the number was like between two and four, I would
16 say, for both of them, if I -- if my memory serves me
17 correctly.

18 Q. Was it the same people in both calls?

19 A. I could not tell you.

20 Q. Men? Women?

21 A. There were -- I definitely remember there being
22 men. And I feel like there may have been a woman on one
23 of them. But I'm just -- I'm just digging in my memory
24 banks. So there may or may not have been a woman on one
25 or both of the calls.

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1 Q. Okay. And we talked about a number of things
2 you talked about with him, the voter lists, McDonald --
3 Professor McDonald's report and the voter list
4 maintenance that they do and the mechanics of that. We
5 talked about the way data is maintained.

6 Are there any other things that you talked
7 to them that we haven't talked about today?

8 A. No, I don't think so. I think we've covered
9 pretty much everything that we talked about. That's the
10 best of my recollection.

11 Q. Okay. And how long were those conversations?

12 A. They weren't -- neither one was super long. I
13 want to say 15, 20 minutes, maybe 30, but none of them
14 were like, you know, four hours long or anything like
15 that. I think both of them were a half-hourish or maybe
16 less.

17 MR. KAISER: Okay. Why don't we go off
18 the record for a second and take a quick break and
19 probably wrap up; is that all right?

20 MR. TYSON: Sure.

21 THE VIDEOGRAPHER: Okay. If there's no
22 objection, we will go off the record now at 2:29 p.m.
23 Central Time. Okay. We're off the record.

24 (Break was taken.)

25 THE VIDEOGRAPHER: We are back on the

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1 record at 2:29 p.m. Go ahead.

2 Q. (BY MR. KAISER) One last question, Professor,
3 and then unless Bryan has questions, you're free to go
4 on about your day.

5 What -- ballpark, what percentage of your
6 income would you say comes from expert testimony work?

7 A. It varies widely from year to year.

8 Q. Ballpark, when you add it up over the last four
9 years?

10 A. The last four years. Oh, my gosh. This has
11 been a strange cycle in that there was lots of
12 redistricting at the end of the decade, so this was --
13 the last four years have been pretty good. I mean
14 normally sometimes I won't get any work at all after,
15 you know, years ending in 4 or 5, but there was more
16 this time. So I would say this decade, in the last four
17 years, I would say it was maybe 20 percent of my total
18 income, something like that.

19 MR. KAISER: Those are all the questions
20 I've got. Bryan, do you have any questions?

21 MR. TYSON: I have a couple of brief ones.
22 Shouldn't take that long.

23 EXAMINATION

24 BY MR. TYSON:

25 Q. Dr. Brunell, I just wanted to ask you a couple

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1 of questions.

2 Do you recall Mr. Kaiser asking you a
3 hypothetical about designing a list maintenance process
4 that involved capturing people who moved. Do you recall
5 those questions?

6 A. I do.

7 Q. And if you had a process that relied only on
8 the national change of address, would you capture every
9 person that moved, or would you possibly miss some
10 people who moved from that?

11 A. You would only capture people necessarily who
12 submit the nation -- the change of address form, so
13 anybody who moves that doesn't submit the form would not
14 be included.

15 Q. So a process that only used national change of
16 address and not some sort of no contact process has a
17 distinct possibility of missing people who move that
18 don't file an NCOA?

19 A. For sure.

20 Q. You were also asked about Table 10 in
21 Dr. Herron's report for the entirety of the 2018 general
22 election turnout. Are precincts -- polling locations
23 and precincts open throughout the early voting period,
24 or are they only open on election day?

25 A. I think they're only open on election day.

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1 Q. And last question, the Florida CNC (phonetic)
2 Services case that you discussed earlier in response to
3 Professor McDonald's report, that was a case that
4 involved absentee ballot recordkeeping, I believe. You
5 had questions from Mr. Kaiser about that.

6 Do you recall that?

7 A. I do.

8 Q. And the information in that case was entered by
9 county election officials, is that -- is that my recall
10 in your testimony correctly?

11 A. I believe that's correct.

12 Q. And in Georgia, is absentee ballot information
13 entered into a database by county election officials?

14 A. I mean county or local election officials,
15 something sub-state, yes.

16 Q. All right.

17 A. I don't know exactly who they're working for.

18 Q. I apologize. I said last question, this is my
19 last one.

20 In your work in the past with large
21 databases, have you had the opportunity to work with
22 voter registration databases on a regular basis?

23 A. Yes, I have, mainly -- so, for instance, like
24 on a -- in a Section 2 case or even in a Section 5
25 Voting Rights Act case, we're likely to do racially

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1 polarized voting analysis. And some states like Georgia
2 and Florida, I believe, if my memory serves correctly,
3 collect registration data on race /and so in those
4 states, rather than using -- relying on census data to
5 tag race by voting calculation district, which is the
6 lowest level we can do it, we would use voting records
7 from those states rather than census data.

8 MR. TYSON: All right. Thank you. I
9 don't have anything else.

10 MR. KAISER: Two follow-ups off of that.

11 FURTHER EXAMINATION

12 BY MR. KAISER:

13 Q. When you're doing that -- the work you just
14 described, working with voter registration databases,
15 to -- I take it that's to figure out the distribution of
16 voters by race within a jurisdiction?

17 A. Correct.

18 Q. Do you need to marry voter activity files or
19 absentee ballot files with that database in order to do
20 that work?

21 A. No, I don't think we -- no, it's not necessary
22 for voting -- for polarization analysis, it's not.

23 Q. Great.

24 And you talked about picking up people who
25 moved who did not fill out a change of address form and

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1 making -- you know, and what you need to do to find
2 those folks to take them off of the list.

3 Do you have any reason to think that -- or
4 have you seen studies that show that not being in touch
5 with elections officials will pick up the people who are
6 unlikely to file a change of address form? Have you
7 seen any research on that?

8 A. I haven't seen any research. I mean it makes
9 sense, it makes logical sense that would be one --
10 another indicator, but I haven't seen any research that
11 shows that.

12 MR. KAISER: Okay. That's all I've got.
13 Thank you very much for your time.

14 MR. TYSON: Nothing else from me. Thank
15 you.

16 THE VIDEOGRAPHER: Okay. Thank you,
17 everyone. This concludes today's deposition.

18 Just one quick thing before we go off the
19 record here, if you could please let us know your
20 transcript and video orders, and if you are ordering
21 video, do you want it synchronized with the transcripts?

22 MR. KAISER: We are and we would.

23 THE VIDEOGRAPHER: Thank you.

24 MR. TYSON: And we'll do E transcripts for
25 us.

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1 THE VIDEOGRAPHER: Video as well.

2 MR. TYSON: No video for us right now.

3 THE REPORTER: Mr. Tyson, do you want a
4 rush for you due in three days also, three business day
5 rush?

6 MR. KAISER: I'm sorry, I just didn't hear
7 what you said.

8 THE REPORTER: I asked Mr. Tyson if he
9 wants an expedited copy of the transcript as well for
10 Tuesday.

11 MR. TYSON: No. We don't need an
12 expedited copy, no thank you.

13 THE REPORTER: Do you want a rough draft?

14 MR. TYSON: No, thank you.

15 THE VIDEOGRAPHER: If there's nothing
16 else, we will go off the record at 2:37 p.m. Central.

17 Okay. We're off the record. Thank you,
18 everyone.

19 (End of Proceedings.)
20
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25

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1 STATE OF TEXAS)

2 I, Brandy Cooper, a Certified Shorthand Reporter
3 duly commissioned and qualified in and for the State of
4 Texas, do hereby certify that there came before me on
5 the 21st day of May, A.D., 2020, at 9:07 a.m at
6 residence of witness, located in Richardson, State of
7 Texas, the following named person, to wit: THOMAS
8 BRUNELL, Ph.D., who was by me duly cautioned and sworn
9 to testify the truth, the whole truth and nothing but
10 the truth, of knowledge touching and concerning the
11 matters in controversy in this cause; and that he was
12 thereupon carefully examined upon his oath, and his
13 examination was reduced to writing under my supervision;
14 that the deposition is a true record of the testimony
15 given by the witness.

16 I further certify that pursuant to FRCP Rule
17 30(e)(1) that the signature of the deponent:

18 ___X___ was requested by the deponent or a party
19 before the completion of the deposition, and that
20 signature is to be before any notary public and returned
21 within 30 days from date of receipt of the transcript;

22 _____ was not requested by the deponent or a party
23 before the completion of the deposition.

24 I further certify that I am neither attorney or
25 counsel for, nor related to or employed by any of the

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1 parties to the action in which this deposition is taken,
2 and further that I am not a relative or employee of any
3 attorney or counsel employed by the parties hereto, or
4 financially interested in the action.

5 CERTIFIED TO BY ME on this 26th day of May, 2020.

6
7
8 BRANDY COOPER, CSR
9 Certification Expires 12-31-2020
10 Firm Registration No. 286
11 1700 Pacific Avenue, Suite 1000
12 Dallas, Texas 75201
13 (214) 257-1436

14 *Brandy Cooper*

15
16 Taxable cost of original charged to Plaintiffs:
17 \$
18 Attorney: Mr. Kaiser

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